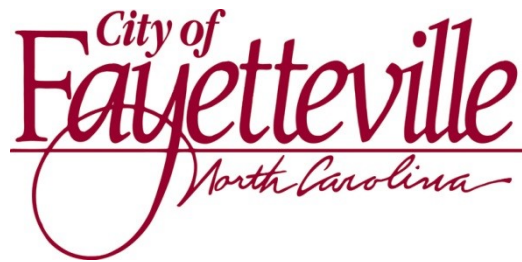


# INVITATION TO BID



**TITLE: Cumberland County Splash Pad Installation**

**Bid Due Date: May 29, 2018**  
**Time: 5:00pm**

**Purchasing Agent: Francesca Cameron**  
[NCameron@ci.fay.nc.us](mailto:NCameron@ci.fay.nc.us)

**City of Fayetteville**  
**Purchasing Department**  
**433 Hay Street**  
**Fayetteville, NC 28301**

**A message from the City of Fayetteville City Manager, Douglas J. Hewett, ICMA-CM**


The City of Fayetteville is fully committed to provide Small Local Business Enterprises (SLBE's) an equal opportunity to participate in all aspects of City contracting including, but not limited to participation in the procurement of contracts relating to the construction of and improvements to facilities throughout the City. It is also the policy of the City to prohibit discrimination against any person or business in pursuit of these opportunities on the basis of race, sex, color, religion or national origin and to conduct its contracting and purchasing programs so as to prevent such discrimination. The City is also committed to follow all applicable State and Federal law as they relate to procurement practices.

The City will actively seek and identify qualified SLBE's and offer them the opportunity to participate in the procurement of contracts for all City purchasing and service contracts as well as construction and repair contracts.

The City aspires to spend 40% of its eligible contract dollars with small local suppliers and contractors. Towards this end the City's Charter has been amended by the General Assembly (H.B. 198) to allow the City to establish a race and gender neutral small business enterprise program to promote the development of small local businesses. The City is authorized to establish bid and proposal specifications that include subcontracting goals and good-faith effort requirements to enhance participation by small business enterprises located in Cumberland and Hoke Counties.

For more information or questions about the SLBE policy, please contact the Purchasing Division at 910-433-1942.

**CITY OF FAYETTEVILLE**



Douglas J. Hewett, ICM-CM  
City Manager

## NOTICE

Pursuant to N.C.G.S. 143-129 sealed bids will be received by the City of Fayetteville, until 5:00 p.m., May 29, 2018, in the Purchasing Department, 2nd floor, City Hall, 433 Hay Street, Fayetteville, North Carolina, at which time they will be considered for the purchase of the following:

### **Installation of Splash Pads in the City of Fayetteville**

Bids will be publicly opened and read at 5:00 PM on May 29, 2018 at City Hall, EE Smith Room, 2<sup>nd</sup> Floor, 433 Hay Street, Fayetteville, NC 28301, for the project entitled, "Installation of Splash Pads in the City of Fayetteville." Bidders or their authorized agents are invited to be present. Upon opening, all bids shall become the property of the City. Bids will not be returned to the Bidder. The City is soliciting these services on behalf of Cumberland County, NC.

The right is reserved to reject any or all bids and to waive all informalities concerning bid, or award bid to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the bids for the performance of the contract.

City of Fayetteville  
Kimberly Toon  
Purchasing Manager

## **SECTION A – PROJECT SPECIFICS**

**SPECIAL PROVISIONS**  
**PERFORMANCE AND DELIVERY**  
**Splash Pad Installation**

Bid Receipt Date:	May 29, 2018; 5:00 PM Purchasing Department 433 Hay Street EE Smith Conference Room Fayetteville, NC 28301
Pre-Bid Conference:	May 17, 2018; 2:00 PM 433 Hay Street EE Smith Conference Room Fayetteville, NC 28301
Plans/Questions:	Email Francesca at <a href="mailto:NCameron@ci.fay.nc.us">NCameron@ci.fay.nc.us</a>
Bid Bond Requirement:	5 % total bid
Date of Availability	Date when contract is executed by both the successful bidder and the City.
Contract Duration	Sixty (60) days
Liquidated Damage Charges	\$1,000.00 per day for each day of unauthorized suspension of the work. \$1,000.00 per day for each day the project exceeds the contract time.
Bid Acceptance Period	(90) Calendar Days unless otherwise noted.

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1. The project consists of the installation of Vortex Splash pads at the following locations;
  - Eastover Community Park 2721 Ballpark Rd, Eastover, NC 28312
  - Godwin Town Park - 4924 Markham St, Godwin, NC 28344
  - Grays Creek Middle School - 5151 Celebration Dr, Hope Mills, NC 28348
  - Linden Little River Park - 5200-5224 Loop Rd, Linden, NC 28356
  - Wade Community Park - 4060 Church Street, Wade, NC 28395
2. Preliminary shop drawings are attached for each of these individual splash pads. Email Francesca Cameron at [NCameron@ci.fay.nc.us](mailto:NCameron@ci.fay.nc.us) for dropbox access.
3. Questions regarding this bid must be submitted in writing to the attention of Francesca Cameron, Purchasing Agent, by e-mail to [NCameron@ci.fay.nc.us](mailto:NCameron@ci.fay.nc.us) no later than 5:00pm, **May 18, 2018**.
4. **Bidders are expressly prohibited from contacting any City of Fayetteville official or employee associated with this Invitation to bid, except as noted above. Violation of this prohibition is grounds for the immediate disqualification of the bidder.**

**INSTRUCTIONS TO BIDDERS**

**5. PROPOSAL**

Proposals shall be made in strict accordance with the "Bid Proposal Package" provided herein, and all blank spaces for bids, alternates and unit prices shall be properly filled in. When requested alternates are not bid, the proposal may be considered incomplete. Any modifications to the "Bid Proposal Package" (including alternates and/or unit

prices) will disqualify the bid and shall cause the bid to be rejected.

The Bidder agrees that the "Bid Proposal Package" detached from specifications will be considered and will have the same force and effect as if attached thereto. Photocopied or faxed proposals will not be considered. Numbers shall be stated both in writing and in figures for the base bids and alternates.

Unit prices quoted in the "Bid Proposal Package" shall include overhead, profit and taxes and shall be the full compensation for the Bidder's cost involved in the work.

Proposals may be rejected if they show omissions, alterations of form, additions not called for, conditional bids, or irregularities of any kind.

## **6. EXAMINATION OF CONDITIONS**

By submitting a bid, the Bidder is affirming that he has carefully examined all documents pertaining to the work, the location, accessibility and general character of the site of the work and all existing buildings and structures within and adjacent to the site, and has satisfied himself as to the nature of the work, the condition of existing buildings and structures, the conformation of the ground, the character, quality and quantity of the material to be encountered, the character of the equipment, machinery, plant, and any other facilities needed preliminary to and during prosecution of the work, the general and local conditions, the construction hazards, and all other matters, including but not limited to the labor situation which can in any way affect the work under the contract, and including all safety measures required by the Occupational Safety and Health Act of 1970 and all rules and regulations issued pursuant thereto. The Bidder further affirms by submitting a proposal that he has satisfied himself as to the feasibility and meaning of the plans, drawings, specifications, and other contract documents for the construction of work and that he accepts all the terms, conditions and stipulations contained therein, and that he is prepared to work in cooperation with other Contractors performing work on the site.

Reference is made to contract documents for the identification of those surveys and investigative reports of subsurface or latent physical conditions at the site or otherwise affecting performance of the work which have been relied upon by the Designer in preparing the documents. The City will make copies of all such surveys and reports available to the Bidder upon request. Each Bidder may, at his own expense, make such additional surveys and investigations as he may deem necessary to determine his bid price for the performance of the work. Any on-site investigation shall be done at the convenience of the City. Any reasonable request for access to the site will be honored by the City.

## **7. FAMILIARITY WITH LAWS**

The bidder is assumed to have made himself familiar with all laws, ordinances, and regulations which in any manner affect those engaged or employed in the work or the materials or equipment used in or upon the work, or in any way affects the conduct of the work.

## **8. PREPARATION OF PROPOSAL**

The bidder must submit his bid proposal on the blank forms herewith provided, and prices must be given both in writing and in figures (if requested). The bidder shall sign his proposal correctly. If the proposal is made by an individual, his name and address must be shown. If made by a corporation, the person signing shall state under the laws of what state the corporation was chartered, the location of the home office, and the name and title of officers having authority under the bylaws to sign contracts.

**9. LICENSING**

The successful Contractor must be properly licensed to do the work in accordance with the North Carolina General Statutes (Chapter 87, Article 1). Upon request, bidders shall show evidence of proper license type and limitation.

**10. BULLETINS AND ADDENDA**

Any addenda to specifications issued during the time of bidding are to be considered covered in the proposal and in closing a contract they will become a part thereof. It shall be the Bidder's responsibility to ascertain prior to bid time the addenda issued and to see that his bid includes any changes thereby required.

Should the bidder find discrepancies in, or omission from, the drawings or documents or should he be in doubt as to their meaning, he shall at once notify the Contracting Office who will send written instructions in the form of addenda to all bidders. Notification should be no later than seven (7) days from the date set for receipt of bids. Neither the City nor the Purchasing Office will be responsible for any oral instructions. All addenda shall be acknowledged by the Bidder(s) on the Proposal Form.

**11. BID SECURITY**

Each proposal shall be accompanied by a cash deposit, certified check or cashier's check drawn on a bank or trust insured by the Federal Deposit Insurance Corporation, payable to the City of Fayetteville in an amount equal to not less than 5 percent of the proposal, or in lieu thereof a bidder may offer a bid bond in the amount of 5 percent of the bid executed by a surety company licensed under the laws of the State of North Carolina to execute the contract in accordance with the bid bond and upon failure to make payment, the surety shall pay the obligee an amount equal to the amount of said bond. Said deposit shall be retained by the Owner as liquidated damages in event of failure of the successful bidder to execute the contract within ten days after the award or give satisfactory surety as required by law.

**12. DELIVERY OF PROPOSAL**

Each proposal must be submitted in a sealed opaque envelope so marked as to indicate its contents, project number, project title, bidder's name, address, contractor's license number and status. Bids may be mailed to the City of Fayetteville Purchasing Department, Attn: Francesca Cameron, Purchasing Agent, 433 Hay Street, Fayetteville, NC 28301, or may be delivered in person or by express mail to the City of Fayetteville Purchasing Department, Attn: Francesca Cameron, 433 Hay Street, Fayetteville, NC 28301. The City of Fayetteville will not be responsible for picking up bids at the post office. Bids arriving after the hour designated for opening shall not be considered.

**13. RECEIPT OF BIDS**

Bids shall be received in strict accordance with requirements of the General Statutes of North Carolina.

**14. WITHDRAWAL OF PROPOSAL**

If the bidder desires to withdraw his proposal, he must do so before the time fixed for the receipt of bids, without prejudice to himself by communicating his purpose in writing to the City, and when received it shall be handed to him or to his authorized agent unread. Bids may not be withdrawn after the time for receipt for a period of sixty (60) days.

**15. BID OPENING**

Bids will be publicly opened and read at **5:00 p.m., May 29, 2018**, in the EE Smith Room, 2<sup>nd</sup> Floor, City Hall Building, 433 Hay Street, Fayetteville, North Carolina 28301. Bidders or their authorized agents are invited to be present. Upon opening, all bids shall become the property of the City. Bids will not be returned to the Bidder.

## **16. BID EVALUATION**

The City may award bid on the basis of the base bid and any alternates the City chooses. Before awarding a contract, the City may require the apparent low bidder to qualify himself to be a responsible bidder by furnishing the documentary data listed below:

- (1) An up-to-date financial statement or other documentation showing assets and liabilities of the Company.
- (2) A listing of three completed projects of similar scope and nature.
- (3) Permanent name and address of place of business.
- (4) The number of employees of the organization and length of time the organization has been in business under the present name.
- (5) The name and address of the surety proposed and the name and address of the responsible local adjuster for insurance claims.
- (6) The names of members of the firm who hold appropriate trade licenses, together with license numbers.
- (7) An affidavit stating whether or not any OSHA violations have occurred within the past three years.

Failure or refusal to furnish any items of information requested by the City shall constitute a basis for disqualification of any bidder.

Should the City adjudge that the apparent low bidder is not the lowest responsible bidder by virtue of the above information requested, said apparent low bidder will be so notified and his bid security shall be returned to him.

Should the successful bidder default and fail to execute a contract, the contract may be awarded to the next lowest and responsible bidder.

## **17. MATERIAL GUARANTY**

Before the award of contract, the successful bidder, when requested, shall furnish a complete statement of the origin, composition, and manufacturer of any and all materials to be used in the construction of the project together with samples, which samples may be subjected to the tests provided for in these specifications to determine their quality and fitness for the work. All materials furnished must meet or exceed quality required by the latest specifications of the North Carolina Department of Transportation.

## **18. DISQUALIFICATION OF BIDDERS**

More than one proposal from an individual, a firm or partnership, a corporation, or an association under the same or different names will not be considered. Reasonable grounds for believing that any bidder is interested in more than one proposal for the work contemplated will cause the rejection of all proposals in which such bidder is interested. Any or all proposals will be rejected if there is reason for believing that collusion exists among the bidders, and all participants in such collusion will not be considered in future proposals for the same work. No contract will be awarded except to competent bidders capable of performing the class of work contemplated.

## **19. UNBALANCED BIDS**

The City reserves the right to reject any bid determined to be unbalanced. In the event that an unbalanced bid is determined to be the lowest responsible bid, the City reserves the right to request negotiation of the particular line



item(s) disputed.

## **20. RIGHT TO REJECT PROPOSALS**

The City reserves the unqualified right to reject any and all bids. Reasons for rejection may include, but shall not be limited to, the following:

- a. If the "Bid Proposal Package" furnished to the bidder is not used or is altered.
- b. If the bidder fails to insert a price for all bid items, alternate and unit prices requested.
- c. If the bidder adds any provisions reserving the right to accept or reject any award.
- d. If there are unauthorized additions or conditions to the bid or irregularities of any kind which tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning.
- e. If the bidder fails to complete the proposal form where information is requested so the bid may be properly evaluated by the City.
- f. If the unit prices contained in the bid are unacceptable to the City.
- g. If the bidder fails to comply with other instructions stated herein.

## **21. SMALL DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

In accordance with NCGS 143-128.2, The City of Fayetteville has a 10% goal for small, minority and women owned business participation on this project. Bidders are hereby notified that the requirements of the City of Fayetteville Small Disadvantaged Business Enterprise Program for Construction, Procurement and Professional Services (a copy of which is included in these contract documents) shall be adhered to in the submission of all bids and shall be made a part of this contract.

The approved SDBE participation submitted by the Contractor shall be the **Contract Requirement**.

Only Historically Underutilized Business (HUB) firms with current certification are acceptable for listing in the bidder's submittal of SDBE participation and will be considered to meet the contract goal. Firms that are certified through HUB are available at the "Search for HUB Vendors" which can be accessed through the following website: <https://www.doa.state.nc.us/HUB/searchhub.htm>.

Bidder shall submit, with his Proposal, the Small Disadvantaged Business Enterprise documentation requested in these specifications. It is ***strongly*** recommended that personnel within your company who are responsible for compliance with these requirements attend the pre-bid, as important information will be reviewed. Failure to submit proper documentation may result in disqualification of the proposal. Questions regarding SDBE requirements shall be directed to Francesca Cameron, Purchasing Agent, at (910) 433-1942.

## **22. MATERIALS, EQUIPMENT, WORKMANSHIP**

- a. The Contractor shall, unless otherwise specified, supply and pay for all labor, materials, tools, and incidentals, necessary for the completion of this work. In addition, the Contractor shall install, maintain and remove all equipment of construction and be responsible for the safe, proper and lawful use of same and shall construct in the best and most workmanlike manner, a completed job

and everything incidental thereto, as shown on the plans, stated in the specifications, or reasonably implied there from, all in accordance with Industry Standard.

- b. All materials shall be new and of quality specified, except where reclaimed material is authorized herein and approved for use. Upon notice, the Contractor shall furnish evidence as to quality of materials.
- c. Whenever products, materials, or equipment are named in the specifications, the specifications shall be interpreted as to mean an item of material or equipment similar to that named and which is suited for the same use and capable of performing the same function as that named. The Contractor shall obtain written approval from the Engineer for the use of substituted products, materials or equipment claimed as equal to those specified.
- d. All work under this contract shall be performed in a skillful and workman like manner. Workmanship shall at all times be of grade accepted as the best practice of the particular trade involved, and as stipulated in written standards, laws, rules, codes or regulations of recognized organizations or institutes of the respective trades except as exceeded or qualified by the specifications. The owner may require, at any time during the performance of this project, the removal of any workman adjudged incompetent, careless or otherwise objectionable to the Owner or Engineer. The Contractor shall immediately order such parties removed from the grounds.

**23. CODES AND STANDARDS:** Where reference is given to codes, standard specifications or other data published by regulating agencies including, but not limited to National Electrical Codes, North Carolina State Building codes, Federal specifications, ASTM Specifications, etc., it shall be understood that such reference is to the latest edition including addenda published prior to the date of the contract documents.

**24. TAXES:** North Carolina Sales Tax and Use Tax apply to materials entering into the City of Fayetteville work as applicable, and as such, costs shall be included in the bid and contract sum.

**25. SALES TAX CERTIFICATE:** The contractor is to complete City forms certifying sales tax paid, on all materials used in construction. The contractor may use his own computer forms as long as the form supplies all information requested by the City certificate. The certificate shall be furnished with each pay request, regardless of amount, and list taxes for all items included in the pay request. In the event the pay request does not include any taxable items, the certificate is still required and must certify this fact. Pay requests without the required certificate may be denied approval (and thus payment) until the certificate is provided).

**9. EQUAL OPPORTUNITY CLAUSE:** The non-discrimination clause contained in Federal Executive Order 11246 and as amended by Executive Order 1375 relative to Equal Employment Opportunity for all persons without regard to race, religion, sex or national origin, and implementing rules and regulations prescribed by the Secretary of Labor are incorporated herein.

## **10. PROTECTION OF WORK, PROPERTY AND THE PUBLIC**

- a. The Contractor shall be responsible for the entire site and shall provide all the necessary protections, as required by the Owner, and by laws or ordinances governing such conditions. The Contractor shall be responsible for any damage to the Owner's property or that of others on the job, by them, their personnel or their subcontractors, and shall make good such damages. The contractor shall be responsible for and pay for and pay for any claims against the Owner.

- b. The Contractor shall protect all portions of the job site(s) and building when work is not in progress, provide and set all temporary roofs covers for doorways, sash and window, and all other materials necessary to protect all the work on the building(s) or any other facilities whether by him or any of his subcontractors. Any work damaged through lack of proper protection shall be repaired or replaced without extra cost to the Owner.
- c. No fire of any kind will be allowed on or near the jobsite without permission of the Engineer.
- d. The Contractor shall provide all necessary safety measures for the protection of all persons on the work, including the requirements of the A. G. C. The Contractor shall adhere to the rules, regulations and interpretations of the North Carolina Department of Labor relating to Occupational Safety and Health Standards for the Construction Industry (Title 20, Code of Federal Regulations, Part 1926 published in Volume 39, Number 122, Part ii, June 24, 1974, Federal Register, and revisions thereto as adopted by General Statues of North Carolina 95-126 through 155.)

#### **11. ASSIGNMENT**

It is the intent of this Agreement to secure the personal services of Contractor and failure of Contractor for any reason to make the personal services available to the City of Fayetteville for the purposes described in this contract shall be cause for termination of this contract. Contractor shall not assign this contract without prior written consent of the City of Fayetteville.

#### **12. GOVERNING LAW**

The validity, interpretation, and execution of this contract and the performance of and rights accruing under this Contract are all to be governed by the laws of North Carolina.

#### **13. COMPLIANCE WITH LAWS**

Contractor agrees to comply with all applicable statutes, ordinances, and regulations of the United States, the State of North Carolina, the City and units of local government.

#### **14. SEVERABILITY**

The parties agree that if any provision of this contract shall be held invalid for any reason, the remaining provisions shall not be affected if they may continue to conform to the purposes of this contract and the requirements of applicable law.

#### **15. DEFAULT**

In the event of substantial failure by Contractor to perform in accordance with the terms of this contract, City of Fayetteville shall have the right to terminate Contractor upon ten (10) days written notice in which event Contractor shall have neither the obligation nor the right to perform further services under this contract nor shall the City of Fayetteville be obligated to make any further payment for work that has not been performed.

**(Please Sign Below and Attach to your Bid)**

**16. IRAN DIVESTMENT ACT CERTIFICATION**

As mandated by N.C.G.S. 147-86.59(a), Bidder hereby certifies that it is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. Bidder further certifies that in accordance with N.C.G.S. 147-86.59(b) that it shall not utilize any subcontractor found on the State Treasurer’s Final Divestment List. Bidder certifies that the signatory to this Invitation to bids is authorized by the Bidder to make the foregoing statement.

**17. E-VERIFY**

Contractor hereby acknowledges that “E-Verify” is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. Contractor further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use e-verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). Contractor hereby pledges, attests and warrants through execution of this Agreement that Contractor complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by Contractor shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Agreement.

\_\_\_\_\_  
Contractor Name (Print)

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Date of Signature

## SUMMARY OF WORK

### PART 1 – GENERAL

The City is soliciting bids from qualified General Contractors to install 5 Vortex Splash Pads at various locations throughout Cumberland County. The City is Soliciting this Construction project on behalf of Cumberland County, NC. All questions and requests for plans should be directed in writing to Francesca Cameron, Purchasing Agent at [NCameron@ci.fay.nc.us](mailto:NCameron@ci.fay.nc.us)

#### 1.01 SUMMARY:

- A. Except as specifically excluded, the Work, in general, includes the following:
  - a. Mobilization
  - b. Grading
  - c. Splash Pad – Fully installed and functional
  - d. Domestic waterline, sewer, and electrical installation
- B. The contractor shall commence work within (15) calendar days from the City’s notice to proceed and shall complete the work on the project within forty-five (45) consecutive calendar days after commencement.

#### 1.02 SITE:

- A. Project is located at:
  - Eastover Community Park 2721 Ballpark Rd, Eastover, NC 28312
  - Godwin Town Park - 4924 Markham St, Godwin, NC 28344
  - Grays Creek Middle School - 5151 Celebration Dr, Hope Mills, NC 28348
  - Linden Little River Park - 5200-5224 Loop Rd, Linden, NC 28356
  - Wade Community Park - 4060 Church Street, Wade, NC 28395

#### 1.03 CONTRACT DOCUMENTS:

- A. The general nature and extent of the Work, the form and general dimensions of the Project, and the appurtenant facilities are shown on the Drawings available upon request from Francesca at [NCameron@ci.fay.nc.us](mailto:NCameron@ci.fay.nc.us)
- B. Perform Work within the limits indicated on the Drawings.
- C. Construct Work under single lump-sum contract.

#### 1.04 CONTRACTOR'S DUTIES:

- A. Provide and pay for:
  1. Labor, materials, equipment, tools and other services necessary for proper execution and completion of Work.
  2. Water, electric, and other utilities necessary for construction and maintenance period including all metering and connection fees or charges (except water acreage assessment charges).
  3. Other facilities and services, necessary for proper execution and completion of work to provide a facility capable of operation.
  4. Legally required sales, consumer, and use taxes.
- B. Permits
  1. The City shall provide the contractor with the initially required building permit. The contractor will be responsible to obtain and pay for subsequent permits for acts created by the contractor. These include but are not limited to: Contractor's modifications, substitutions and/or corrective modifications required during the course of the Work from

contractor's oversight or negligence. The contractor will not be responsible for subsequent plan check and permit for modifications requested by the owner, owner's architect and clarification(s) for oversights by the owner's architect.

2. If applicable the Awarded Contractor will be responsible to obtain and pay for an "Encroachment Permit" for the transportation of materials and debris on city streets from the City of Fayetteville's Engineering & Infrastructure Department. All incidentals (haul route plans, insurance, securities, etc.) necessary to obtain this permit shall be provided by the contractor as part of the projects base Bid. A copy of the "Encroachment Permit" must be provided to the City prior to the start of construction.
  3. If applicable the contractor shall obtain and pay for other permits related to City and County, including business licenses, business tax, hauling and dump permits as required.
  4. If applicable the contractor will arrange and pay for all meter and connection permits and/or any cost or fee(s) for utilities, including water, sewer, electrical, telephone, storm drain, etc., for this project.
- C. Comply with latest edition of the uniform building code and other codes, ordinances, rules, regulations, orders and other legal requirements of public authorities which bear on performance of the Work.
- D. Attend on-site job meetings and special meetings as required by the City.
- E. Promptly submit written notice to the City of any observed variance in Contract Documents from legal requirements. Appropriate Modifications to Contract Documents will be issued by the City to make the necessary changes. Assume responsibility for Work known to be contrary to such requirements.
- F. Enforce strict discipline and good order among employees. Do not employ unfit persons, persons not skilled in assigned task, and persons less than 18 years of age, unless such person(s) are legally established as union apprentices and/or enrolled as work experience personnel. The contractor must provide satisfactory documentation to the City prior to employing anyone under the age of 18.

#### 1.05 SCHEDULE:

- A. The sequence and scheduling of the Work to be performed by the Contractor shall be subject to review by the City. Submit Progress Schedule in accordance with General Conditions.

#### 1.06 CONTRACTOR'S USE OF PREMISES:

- A. Confine operations at site to areas immediately adjacent to the proposed Project. Develop and utilize construction access as approved in advance by Owner.
1. Do not unreasonably encumber site with materials or equipment.
  2. Do not load structure or site with weight that will endanger structure or site.
- B. Assume full responsibility for protection and safekeeping of products stored on premises and work performed until completion and acceptance of the entire construction.
- C. Move stored products under Contractor's control which interfere with operations of Owner or other

contractor.

- D. Obtain and pay for use of additional storage or work areas needed for construction operations.

1.07 NUISANCE WATER:

- A. It is anticipated that nuisance water, such as rainfall, irrigation water, groundwater and surface runoff may be encountered within the construction site during the period of construction. Contractor shall at all times protect the Work from damage, and shall take measures to prevent delays in the progress of the Work caused by such water. Contractor shall dispose of nuisance water at his own expense and without adverse effects upon the Owner's property, or any other property.

1.08 REFERENCE POINTS:

- A. The Contractor shall be responsible for establishing and maintaining all necessary reference points and grade lines for this project.

1.09 DUST CONTROL:

- A. The contractor shall abate nuisance dust by sweeping and sprinkling water and other means necessary. The use of water resulting in mud on public streets and sidewalks will not be permitted.
- B. During the grading and excavation operation, the contractor shall provide adequate dust control by means of watering trucks or other apparatus. Any damage to existing public or private facilities due to earth blown problems shall be corrected at the contractor's expense.

1.10 CLEANING DURING CONSTRUCTION:

- A. Execute periodic cleaning to keep the Work site and adjacent properties free from accumulations of waste materials, rubbish, and windblown debris resulting from construction operations.
  - 1. The City may, at any time during construction, order general clean-up of the site.
- B. Provide on-site containers for the collection of waste materials, debris and rubbish.
- C. Remove waste materials, debris, and rubbish from the site periodically and dispose of them at legal disposal areas away from the site.
  - 1. Location of dump for trash debris, fees, and length of haul is responsibility of Contractor.
  - 2. Bury no waste material or debris on the site.
  - 3. Burning of trash or debris on the site will **not be permitted**.

1.11 STORM WATER POLLUTION CONTROL PLAN:

- A. It will be the responsibility of the awarded contractor to provide, install and maintain all "Best Management Practices (BMPs) for Erosion Control, Waste Discharge Requirements for Storm Water (Wet Weather), Non-Storm Water Discharges (Dry Weather) and Pollution Reduction Measure" for the project.
- B. Adequate allowances shall be made in each bidder's bid to perform the mitigation measures during the course of construction. No adjustments to the contract sum will be considered by the City for this portion of the work.

**CITY OF FAYETTEVILLE**  
**SPLASH PAD INSTALLATION**  
**BID PACKAGE**

In compliance with your Invitation to bids, the undersigned hereby proposes to furnish materials and perform the work for this project per the items listed herein in strict accordance with the Invitation to bids, Standard Specifications, contained in the bid documents for the consideration of prices quoted for the enclosed contract items.

THE CITY RESERVES THE RIGHT TO ELIMINATE OR ADD TO THIS CONTRACT.

ALL PRICES ARE TO INCLUDE NC SALES AND USE TAXES

**This Bid Package is executed by:**

Name \_\_\_\_\_

Company Name \_\_\_\_\_

Email Address: \_\_\_\_\_

Address \_\_\_\_\_

Phone No. \_\_\_\_\_

License # \_\_\_\_\_ Bid Total \$ \_\_\_\_\_

Base Bid Total (Written) \_\_\_\_\_

**Signature** \_\_\_\_\_

**Title** \_\_\_\_\_

The accompanying bid form(s) must be completed in blue or black ink or by typewriter. Discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the correct multiplication of unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

**ACKNOWLEDGEMENT OF ADDENDA**

The bidder has received, acknowledged, and used the following addenda in completing the Bid. (Initial and Date as appropriate)

Addendum No. 1 \_\_\_\_\_

Dated: \_\_\_\_\_

Addendum No. 2 \_\_\_\_\_

Dated: \_\_\_\_\_

Addendum No. 3 \_\_\_\_\_

Dated: \_\_\_\_\_

Addendum No. 4 \_\_\_\_\_

Dated: \_\_\_\_\_



**BID PRICING SCHEDULE**

**UNIT PRICES**

Unit prices quoted and accepted shall apply throughout the life of the contract, except as otherwise specifically noted. Unit prices shall be applied, as appropriate, to compute the total value of work completed and of changes in the scope of the work, all in accordance with the contract documents.

**Item 1: Splash Pad Installation:** Eastover Community Park 2721 Ballpark Rd, Eastover Complete cost of Mobilization, Grading, Splash Pad – Fully installed and functional, and Domestic waterline, sewer, and electrical installation.

\$ \_\_\_\_\_ Lump Sum per Splash Pad.

**Item 2: Splash Pad Installation:** Godwin Town Park - 4924 Markham St, Godwin Complete cost of Mobilization, Grading, Splash Pad – Fully installed and functional, and Domestic waterline, sewer, and electrical installation.

\$ \_\_\_\_\_ Lump Sum per Splash Pad.

**Item 3: Splash Pad Installation:** Grays Creek Middle School - 5151 Celebration Dr, Hope Mills Complete cost of Mobilization, Grading, Splash Pad – Fully installed and functional, and Domestic waterline, sewer, and electrical installation.

\$ \_\_\_\_\_ Lump Sum per Splash Pad.

**Item 4: Splash Pad Installation:** Linden Little River Park - 5200-5224 Loop Rd, Linden Complete cost of Mobilization, Grading, Splash Pad – Fully installed and functional, and Domestic waterline, sewer, and electrical installation.

\$ \_\_\_\_\_ Lump Sum per Splash Pad.

**Item 5: Splash Pad Installation:** Wade Community Park - 4060 Church Street, Wade Complete cost of Mobilization, Grading, Splash Pad – Fully installed and functional, and Domestic waterline, sewer, and electrical installation.

\$ \_\_\_\_\_ Lump Sum per Splash Pad.

<b>Total: \$ _____ For all 5 Splash Pads.</b>
---

## INSURANCE REQUIREMENTS

The Contractor shall not commence work under this Contract until he has obtained all insurance required under this paragraph, and such insurance has been approved by the City Attorney, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance has been so obtained and approved. See Other Provisions Section (2) (c) below titled "Subcontractors."

The insurance required for this contract is as follows:

(a) **Commercial General Liability ISO #CG 00 01 10 93:** The Contractor shall take out and maintain during the life of this contract commercial general liability insurance with limits of \$1,000,000 per occurrence; \$2,000,000 aggregate other than products/completed operations; \$2,000,000 aggregate for products/completed.

(b) **Automobile Liability ISO #CA 00 01 12 93:** The Contractor shall take out and maintain during the life of this contract automobile liability insurance in an amount not less than \$1,000,000 combined single limit per accident for bodily injury and property damage from owned, non-owned, and hired automobiles.

(c) **Workers' Compensation and Employers' Liability Insurance:** The Contractor shall take out and maintain during the life of this contract workers' compensation insurance as required by the laws of the State of North Carolina and Employers' Liability with limits of \$100,000 each accident, \$500,000 policy limit and \$100,000 each employee for all employees employed on the project. In case any employee(s) engaged in work under this contract is or are not protected under the Workers' Compensation Statute, the Contractor shall provide adequate coverage for the protection of employees not otherwise protected.

(d) **Property Insurance:** If contracted to construct a building, the Contractor shall purchase and maintain "Builder's Risk" insurance. This insurance shall include the interests of the City, the Contractor and Subcontractors and shall be written on a one hundred percent (100%) completed value basis (full value as of the date that all construction is finished and includes the Contractor's total cost plus profit), and to remain in force until the project is completed and accepted by the City.

Regardless of the nature of the work to be performed, coverage must also be provided for the theft or damage of building materials and supplies, which are not permanently attached and stored on site for any period of time. This coverage shall be an "Installation Floater," and where no building construction is involved, the amount of the coverage shall equal the value of the materials stored on site.

It is the responsibility of the Contractor to inform the policy provider of any and all change orders which increase the building's value. Any penalties or losses incurred due to the Contractor's failure to adequately insure the building during construction will be the Contractor's responsibility.

**(e) Owner's and Contractor's Protective Liability I.S.O.#CG 00 09 10 93:** The Contractor shall secure and maintain during the life of the contract, an Owner's and Contractor's Protective Liability insurance policy for the City, with minimum limits of \$1,000,000 per occurrence/\$2,000,000 aggregate.

### Acceptability of Insurance

All insurance policies shall be written by insurers licensed to do business in North Carolina. It is realized that certain business activities may not be readily insurable by admitted carriers. If insurance is written by non-admitted carriers whose names appear on the current listing of approved and non-admitted carriers prepared by the North Carolina Department of Insurance, such carriers will be favorably considered assuming they meet

all other requirements. Non-admitted carriers should be so identified on the Certificate of Insurance form. The City reserves the right to reject any and all certificates or policies issued by insurers with a Best's rating less than A;VII.

### Indemnity Provision

Contractor assumes entire responsibility and liability for losses, expenses, demands and claims in connection with or arising out of any injury, or alleged injury (including death) to any person, or damage, or alleged damage, to property of the City of Fayetteville or others sustained or alleged to have been sustained in connection with or to have arisen out of or resulting from the negligence of the Contractor, his subcontractors, agents, and employees, in the performance of the work/service set forth in the Standard Specifications and Special Provisions, and any changes, addenda, or modifications including losses, expenses or damages sustained by the City of Fayetteville, and agrees to indemnify and hold harmless the City of Fayetteville, its officials, employees or volunteers from any and all such losses, expenses, damages, demands and claims and agrees to defend any suit or action brought against them, or any of them, based on any such alleged injury or damage, and to pay all damages, cost and expenses in connection therewith or resulting there from. As an integral part of this agreement Contractor agrees to purchase and maintain during the life of this contract contractual liability insurance in the amount required in the general liability insurance requirements and to furnish proper evidence thereof.

### Other Provisions:

(1) Any deductible or self-insured retention must be declared to and approved by the City.

(2) The policies are to contain, or be endorsed to contain, the following provisions:

(a) Commercial General Liability Coverage

1) The City of Fayetteville, its officials, employees and volunteers are to be covered as additional insurers as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.

2) The Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

3) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(b) All Coverage's

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to:

City of Fayetteville Purchasing Office  
433 Hay Street  
Fayetteville, NC 28301

Any failure to comply with reporting provisions of the policies shall not affect coverage

provided to the City, its officials, employees, and volunteers. In the event the City is damaged by the failure of the Contractor to maintain such insurance and to so notify the City, the Contractor shall bear all reasonable costs properly attributable thereto.

(c) Subcontractors

Contractor shall include all subcontractors as insurers under its policies OR shall furnish separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to all of the requirements stated herein.

(d) No Waiver of Immunity

Any insurance coverage required by the terms of this contract shall not be deemed a contract of insurance purchased by the City nor a waiver of the City's immunity pursuant to NCGS 160A-485.

### Important Dates

Issue Date of ITB	May 8, 2018
Prebid Conference	May 17, 2018 2:00 PM, EE Smith Room
Deadline for Written Questions	May 18, 2018; 5:00 PM
<b>ITB Submission Deadline</b>	<b>May 29, 2018; 5:00 PM</b>

#### Closing Date and Time

The Submission Deadline is May 29, 2018 at 5:00PM. Bids must be clearly marked as to its contents, and must be submitted before the Submission Deadline to:

**City of Fayetteville - Purchasing Department**

Attn: Francesca Cameron

433 Hay Street

Fayetteville, NC 28302

**Bids received later than the specified closing time will be returned, unopened, to the bidder.**

#### Opening of Bids

Bids will be opened at 5:00PM on, May 29, 2018 in the EE Smith Room on the 2<sup>nd</sup> Floor or City Hall.

#### Questions/Clarifications

Inquiries regarding this ITB must be submitted to Francesca Cameron, Purchasing Agent. No inquiries are to be directed to any other employee or elected Official of the City. Questions will be accepted via email [NCameron@ci.fay.nc.us](mailto:NCameron@ci.fay.nc.us) until 5:00PM on May 18, 2018. All clarification requests are to be sent in writing to the individual mentioned above. No clarification requests will be accepted by telephone. Responses to clarification requests will be provided in the form of an addendum. Any changes to the invitation to bid, prior to the bid closing will be issued as an addendum. The City will assume no responsibility for oral instruction or suggestions. Failure to acknowledge all addenda will result in your bid being rejected. All addendum(s) will be provided to the bidders via email provided by the bidder. Any bid received without addendum(s) acknowledged and/or submitted as instructed will be rejected.

#### Privilege Clause:

The City of Fayetteville reserves the right to accept or reject any or all bids. The City of Fayetteville may, at its

sole discretion, choose not to accept any bid it considers to not be in the best interest of the City. The City of Fayetteville reserves the right to determine whether any bid meets the mandatory requirements of this ITB. The City of Fayetteville reserves the right to waive any formality, informality or technicality in any bid whether of a minor and inconsequential nature or whether of a substantial or material nature.

**Right to Negotiate:**

The City of Fayetteville reserves the right to negotiate with any Bidder that has submitted a bid that does not fully comply, in either a material or non-material way with the mandatory ITB requirements or any requirements contained with the ITB. The City of Fayetteville reserves the right to negotiate the specific contractual terms and conditions with the Bidder that has submitted the bid which the City deems to be the most attractive bid to the City of Fayetteville.

## LIST OF SUBCONTRACTORS

The Prime Contractor states that his Bid is based on quantities received from the following Subcontractors for the various categories of work listed which may exceed 5% of the Contract work; the Prime Contractor agrees that if he is the successful Bidder and if the listed Subcontractors are approved by the Owner's Representative, he shall contract with the approved listed Subcontractors for the performance of this work. The total amount of subcontracted work cannot exceed 49% of the Contract Amount.

Subcontractors Name	Type of Work	% of Contract Amount
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

THIS FORM SHALL BE SUBMITTED WITH PROPOSAL

\_\_\_\_\_  
COMPANY

\_\_\_\_\_  
BIDDER'S SIGNATURE

\_\_\_\_\_  
TITLE

**SPLASH PAD INSTALLATION  
 CERTIFICATION OF PRIMARY PARTICIPANT  
 REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

The Primary Participant, \_\_\_\_\_ (major third party contractor), certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. (If the primary participant is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.)

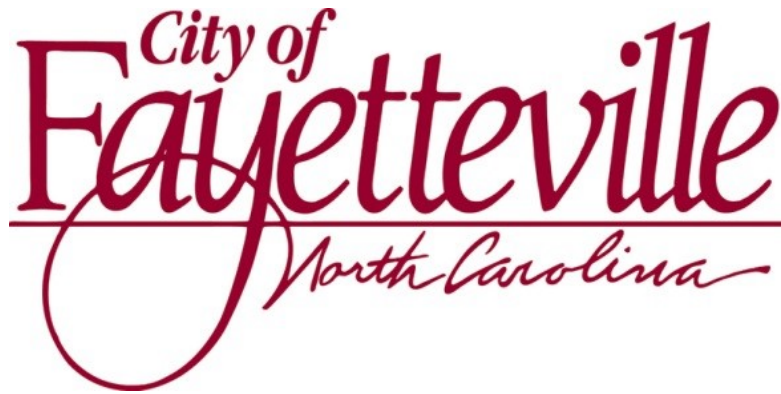
THE PRIMARY PARTICIPANT \_\_\_\_\_ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET. SEQ. ARE APPLICABLE THERETO.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
DATE



**CITY OF FAYETTEVILLE**

**SMALL DISADVANTAGED BUSINESS**  
**ENTERPRISE PROGRAM**  
**FOR**  
**CONSTRUCTION, PROCUREMENT, AND**  
**PROFESSIONAL SERVICES**

**FAYETTEVILLE CITY COUNCIL**  
**433 HAY STREET**  
**FAYETTEVILLE, NORTH CAROLINA 28301**



**SMALL DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

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## SMALL DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

### **I. Applicability.**

(a) This program shall apply to all construction and repair work involving the expenditure of City funds, regardless of the sources of other funds, in the amounts set forth in G.S. 143-129 and G.S. 143-131; this program shall also apply to the procurement of architectural, engineering and surveying services as outlined in G.S. 143-64.31. This program shall not apply to contracts established by the State or any agency of the State.

(b) If any section, subsection, clause or provision of this chapter, including those groups found to be presumptively socially disadvantaged, is held to be invalid by a court of competent jurisdiction, the remainder of the chapter shall not be affected by such invalidity.

### **II. Definitions.**

As used in this part, the following terms shall have the following meanings:

*Affiliation* - One firm controls or has the power to control the other, or a third party or parties controls or has the power to control both, or an identity of interests exists between such firms. In determining whether firms are Affiliates, the City shall consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a firm is a Small Business Enterprise.

*Bidder/Participant* - Any person, firm, partnership, corporation, limited liability company, association or joint venture seeking to be awarded a public contract or subcontract.

*Brokering* - Filling orders by purchasing or receiving supplies from a third party supplier rather than out of existing inventory, and providing no Commercially Useful Function other than acting as a conduit between a supplier and a customer.

*City* - The awarding authority for contracts awarded by the City of Fayetteville.

*City's Marketplace* - The geographic and procurement areas in which the City contracts on an annual basis.

*Commercially Useful Function* - Responsibility for the execution of a distinct element of the work of the contract which is carried out by actually performing, managing, and supervising the work involved, or fulfilling responsibilities as a joint venture.

*Contract* - A mutually binding legal relationship or any modification thereof obligating the seller to furnish equipment or services and obligating the buyer to pay for them, not including leases or emergency procurements.

*Doing Business* - Having a physical location from which to engage in for profit activities in the scope(s) of expertise of the firm.

*Economically Disadvantaged* - An individual whose Personal Net Worth is less than the amount identified in 49 CFR Part 26

*Equipment* - Materials, supplies, commodities and apparatuses.

*Expertise* - Demonstrated skills, knowledge, or ability to perform in the field of endeavor in which certification is sought by the firm as defined by normal industry practices, including licensure where required.

*Good Faith Efforts* - Actions undertaken by a Bidder/Participant to achieve a SDBE goal which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the Program's requirements.

*Joint Venture* - An association of two or more persons, or any combination of types of business enterprises and persons numbering two or more, proposing to perform a single for profit business enterprise, in which each joint venture partner contributes property, capital, efforts, skill and knowledge, and in which the SDBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture is commensurate with its ownership interest. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationships between the partners and their relationship and responsibility to the contract.

*Managers* - The City Manager.

*Manufacturer* - A firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

*Personal Net Worth* - The net value of the assets of an individual after total liabilities are deducted. An individual's Personal Net Worth does not include the individual's ownership interest in an applicant or the individual's equity in his or her primary place of residence. An individual's Personal Net Worth includes only his or her share of assets held jointly with the individual's spouse.

*Program* - The SDBE Program.

*Project Specific Goal* - The Goal established for a particular project or contract based upon the availability of SDBEs in the scopes of work of the Contract.

*Regular Dealer* - A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a Regular Dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A firm may be a Regular Dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of a Regular Dealer's distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis. Packers, manufacture representatives, or other persons who arrange or expedite transactions are not Regular Dealers.

*Schedule of Participation* - The list of SDBEs that the Bidder/Participant commits will be utilized, their scopes of the work, and dollar value or the percentage of the project they will perform.

*Socially Disadvantaged* - An individual who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to individual qualities. Social disadvantage must stem from circumstances beyond the individual's control. A Socially Disadvantaged individual must be a citizen or lawfully admitted permanent resident of the United States who is either:

- (a) A person whose lifelong cultural and social affiliation is with one of the following groups, which are rebuttably presumed to be Socially Disadvantaged:
  - (i) Blacks/African - Americans (persons having origins in any of the Black racial groups of Africa);
  - (ii) Hispanic - Americans (persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race);
  - (iii) Native - Americans (persons having origins in the original groups of North America);

- (iv) Asian - Americans (persons having origins in any of the original groups of the Far East, Southeast Asia, the islands of the Pacific or the Indian Subcontinent);
- (v) Women; or
- (b) Any socially disadvantaged individual as defined by 15 U.S.C. 637.

*Small Disadvantaged Business Enterprise (SDBE)* - Means a business, including a sole proprietorship, partnership, corporation, limited liability company, joint venture or any other business or professional entity:

- (a) Which is at least 51 percent owned by one or more Socially and Economically Disadvantaged individuals, or in the case of a publicly owned business, at least 51 percent of all classes of the stock of which is owned by one or more Socially and Economically Disadvantaged individuals;
- (b) Whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more such Socially and Economically Disadvantaged individuals;
- (c) Which is a Small Business Enterprise as defined by 13 CFR Part 121;
- (d) Which is Doing Business in the City's Marketplace; and
- (e) Which is certified as a SDBE by the City of Fayetteville.

*SDBE Program Coordinator* - The person designated by the Managers to administer the Program.

### **III. SDBE Program Administration.**

The Coordinator shall administer the SDBE Program, which duties shall include:

- (a) Formulating, proposing, and implementing rules and regulations for the further development, implementation, and monitoring of the Program.
- (b) Informing SDBEs of City contracting opportunities through outreach activities.
- (c) Providing information and assistance to SDBEs relating to City procurement practices and procedures, and bid specifications, requirements, and prerequisites.
- (d) Certifying businesses as SDBEs, maintaining certification records, and ensuring that all City departments have current certification listings.
- (e) Establishing Project Specific Goals.
- (f) Evaluating Bidder/Participant's achievement of Project Specific Goals or Good Faith Efforts to meet Project Specific Goals.
- (g) Working with City departments to monitor Contracts to ensure prompt payments to SDBEs, compliance with Project Specific Goals and commitments and the Program's operations and objectives.
- (h) Receiving, reviewing, and acting upon complaints and suggestions concerning the Program.

- (i) Collecting data to evaluate the Program.
- (j) Monitoring the Program and reporting to the Managers, the Mayor and the City Council on the administration and operations of the Program.

**IV. Race- and Gender-Neutral Measures to Ensure Equal Opportunities for All Bidders/Participants.**

The City shall develop and use measures to facilitate the participation of all firms in City contracting activities. These measures shall include, but are not limited to:

- (a) Arranging solicitation times for the presentations of bidding opportunities, which includes quantities, specifications and delivery schedules so as to facilitate the participation of interested firms.
- (b) Dividing requests for bids or proposals into work elements to facilitate the participation of small firms.
- (c) Providing timely information on specific contracting opportunities, contracting procedures, and bid preparation.
- (d) Holding pre-bid conferences, where appropriate, to explain the projects.
- (e) Enforcing prompt payment requirements and procedures, including requiring by contract that prime contractors promptly pay subcontractors.
- (f) Reviewing bonding and insurance requirements to eliminate unnecessary barriers to contracting with the City.
- (g) Maintaining information on all firms bidding on City prime contracts and subcontracts.

**V. SDBE Program Eligibility.**

- (a) Only businesses that meet the criteria of SDBEs may participate in the Program.
- (b) The City shall apply the certification criteria and procedures of 49 CFR Part 26 to applicants for participation in the Program.
- (c) The City shall certify the eligibility of joint ventures involving SDBEs and non-SDBEs.
- (d) In lieu of conducting its own certifications, the Coordinator may accept formal certifications by other entities as meeting the requirements of the Program, if the eligibility standards of such entities are comparable to those of the City. Certification decisions, including decertification and graduation determinations, by those other entities shall be accepted by the City in its discretion.
- (e) It is the responsibility of the SDBE to notify the Coordinator of any change in its circumstances affecting its continued eligibility for the Program. Failure to do so may result in the firm's decertification.
- (f) A SDBE may be decertified if it submitted inaccurate, false, or incomplete information to the City or failed to comply with requirements of a contract with the City or with the requirements of the Program.
- (g) A third party may challenge the eligibility of a certified firm:
  - (1) The challenge shall be made in writing under oath and shall include all information relied upon by the challenging party.

- (2) The Coordinator shall provide an opportunity to the parties for an informal hearing. The parties may appear and provide documentation or other evidence and be represented by counsel.
- (3) The Coordinator shall render a written decision within 15 days of the hearing.
- (4) If the Coordinator determines that the firm is not eligible, it may appeal the determination to the Manager in writing within 7 days of receipt of the written decision. The challenging party shall have no right of appeal from the Coordinator's determination.
- (5) The Manager shall issue a written decision within 15 days of receipt of the appeal. The Manager's determination shall be final.

(h) A firm that has been decertified may not reapply for certification for one year from the effective date of its decertification.

## **VI. SDBE Goal Setting.**

The Coordinator shall establish a Project Specific Goal for appropriate Contracts based on normal industry practice as determined in consultation with the appropriate Department, the availability of SDBEs to perform the functions of the Contracts and the City's utilization of SDBEs to date.

## **VII. Counting Participation of SDBEs.**

(a) The entire amount of that portion of a construction Contract that is performed by the SDBE's own forces shall be counted, including the cost of equipment obtained by the SDBE for the work of the Contract, and equipment purchased or leased by the SDBE (except equipment the SDBE subcontractor or Joint Venture partner purchases or leases from the prime contractor or its Affiliate).

(b) The entire amount of fees or commissions charged by a SDBE for providing a *bona fide* service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of the Contract, shall be counted, provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services.

(c) When a SDBE performs as a participant in a Joint Venture, only the portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the work of the Joint Venture's Contract that the SDBE performs with its own forces and for which it is separately at risk shall be counted.

(d) Only expenditures to a SDBE that is performing a Commercially Useful Function shall be counted. To determine whether a firm is performing a Commercially Useful Function, the City will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing and other relevant factors. To perform a Commercially Useful Function, the SDBE must be responsible, with respect to equipment used on the Contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) and paying for the material itself. A SDBE does not perform a Commercially Useful Function if its role is limited to that of an extra participant in the Contract through which funds are passed in order to obtain the appearance of SDBE participation. If a SDBE subcontracts a greater portion of the work of a Contract than would be expected on the basis of normal industry practice, it is presumed not to perform a Commercially Useful Function. When a SDBE is presumed not to be performing a Commercially Useful Function, the SDBE may present evidence to rebut this presumption.

(e) One hundred percent of the cost of the materials or supplies obtained from a SDBE Manufacturer or Regular Dealer shall be counted. One hundred percent of the fees or transportation charges for the delivery of materials or supplies required on a job

site shall be counted only if the payment of such fees is a customary industry practice and are commensurate with fees customarily charged for similar services. The cost of the materials and supplies shall not be counted.

(f) If a firm is decertified during performance of a Contract, the dollar value of work performed under a Contract with that firm after it has been decertified shall not be counted.

(g) In determining achievement of a Project Specific Goal, the participation of a SDBE shall not be counted until that amount has been paid to the SDBE.

**VIII. Procurement of Architectural, Engineering and Surveying Services (G.S. 143-64.31)**

(a) The City shall use good faith efforts to notify minority firms of the opportunity to submit qualifications for architectural, engineering, surveying and construction management at risk services.

**IX. Informal Construction and Repair Work (G.S. 143-131)**

(a) The City shall solicit minority participation for construction and repair projects in the amount of five thousand dollars (\$5,000) or more, but less than three hundred thousand dollars (\$300,000). The City shall maintain a record of contractors solicited and shall document efforts to recruit minority business participation in these contracts.

**X. Formal Construction and Repair Work (G.S. 143-129)**

(a) For all solicitations, the Bidder/Participant shall submit a Schedule of Participation detailing all subcontractors from which the Bidder/Participant solicited bids or quotations, and if a Project Specific Goal has been established, its achievement of the Goal or its Good Faith Efforts to do so. The list of SDBEs provided by the City to a Bidder/Participant establishes the minimum universe from which a Bidder/Participant must solicit SDBEs. The Schedule of Participation shall be due at the time set out in the solicitation documents.

(b) Any agreement between a Bidder/Participant and a SDBE in which the Bidder/Participant requires that the SDBE not provide subcontracting quotations to other bidders/proposers is prohibited.

(c) SDBEs shall respond to relevant requests for quotations.

(d) Where the Bidder/Participant cannot achieve the Project Specific Goal, the Coordinator will determine whether the Bidder/Participant has made Good Faith Efforts. At a minimum, the Bidder/Participant must engage in the following Good Faith Efforts that total at least 50 points for the bid or proposal to be responsive.

- (1) Contacting SDBEs from the list provided by the City at least ten days before the bid or proposal date and notifying them of the nature and scope of the work to be performed. The Bidder/Participant shall provide interested SDBEs with timely, adequate information about the plans, specifications, and requirements of the Contract to allow SDBEs to respond to the solicitation. The Bidder/Participant must follow up initial solicitations with interested SDBEs. 10 points.
- (2) Providing or making the construction plans, specifications, and requirements available for review by SDBEs at least ten days before the bid or proposals are due. 10 points.
- (3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation. 15 points.

- (4) Working with SDBE, minority, women, trade, community or contractor organizations identified by the City in the bid documents that provide assistance in recruitment of SDBEs. 10 points.
- (5) Attending any prebid meetings scheduled by the City. 10 points.
- (6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. 20 points.
- (7) Negotiating in good faith with interested SDBEs and not rejecting them as unqualified without sound reasons based on their capabilities. Evidence of such negotiation includes the names, addresses, and telephone numbers of SDBEs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and why agreements could not be reached with SDBEs. The Bidder/Participant may not reject SDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. Any rejection of a SDBE based on price or lack of qualifications must be documented in writing. 15 points.
- (8) Providing assistance to an otherwise qualified SDBE in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting SDBEs in obtaining the same unit pricing with the bidder's suppliers in order to help minority SDBEs to establish credit. 25 points.
- (9) Negotiating joint venture and partnership arrangements with SDBEs to increase opportunities for SDBE participation. 20 points.
- (10) Providing quick pay agreements and policies to enable SDBEs to meet cash-flow demands. 20 points.

(e) In determining whether a Bidder/Participant has made Good Faith Efforts, the performance of other bidders/proposers in meeting the Project Specific Goal may be considered. For example, when the apparent successful Bidder/Participant fails to meet the Project Specific Goal but others meet it, it may be reasonably questioned whether, with additional reasonable efforts, the apparent successful Bidder/Participant could have met the Goal. Similarly, if the apparent successful Bidder/Participant fails to meet the Goal, but meets or exceeds the average SDBE participation obtained by other bidders/proposers, this may be evidence that the apparent successful Bidder/Participant made Good Faith Efforts.

(f) The Coordinator shall timely review the Schedule of Participation prior to award, including the scope of work and the letters of intent from SDBEs. The Coordinator may request clarification in writing of items listed in the Schedule of Participation, provided such clarification shall not include the opportunity to augment listed SDBE participation or Good Faith Efforts.

(g) The Schedule of Participation and supporting documents shall be reviewed by a Bid Selection Committee, composed of the operating departments, Purchasing Department, Coordinator and other representatives as appropriate. If the Bid Selection Committee initially determines the bid to be responsive, it shall recommend award of the Contract to the Managers. If the Bid Selection Committee determines the bid to be non-responsive, it shall confer with the City Attorney prior to recommending the rejection of the bid.

(h) A Bidder/Participant found to be non-responsive may appeal this determination pursuant to the City's bid protest procedures.

## **XI. Contract Performance Compliance Procedures.**

- (a) Upon award of a Contract by the City that includes a Project Specific Goal, the Goal becomes a covenant of performance by the Bidder/Participant in favor of the City.



(b) The Bidder/Participant shall provide a listing of all subcontractors to be used in the performance of the Contract, and subcontractor payment information to the City with each request for payment submitted to the City. The Coordinator and the operating department shall monitor subcontractor participation during the course of the Contract and shall have reasonable access to all Contract-related documentation held by the Bidder/Participant. The Bidder/Participant shall submit reports at such times and in such formats as requested by the City.

(c) The Bidder/Participant shall cooperate with the City in studies and surveys related to the Program.

(d) The Bidder/Participant cannot make changes to the Schedule of Participation or substitute subcontractors named in the Schedule of Participation without the prior written approval of the Coordinator. Unauthorized changes or substitutions shall be a violation of this program, and may constitute grounds for rejection of the bid or proposal or cause termination of the executed Contract for breach, the withholding of payment and/or subject the Bidder/Participant to Contract penalties or other sanctions.

(1) All requests for changes or substitutions of the subcontractors named in the Schedule of Participation shall be made to the Coordinator in writing, and shall clearly and fully set forth the basis for the request. A Bidder/Participant shall not substitute a subcontractor or perform the work designated for a subcontractor with its own forces unless and until the Coordinator approves such substitution in writing.

(2) The facts supporting the request must not have been known nor reasonably should have been known by either party prior to the submission of the Schedule of Participation. Bid shopping is prohibited.

(3) Substitutions of the subcontractor shall be permitted only on the following basis:

(i) Unavailability after receipt of reasonable notice to proceed.

(ii) Failure of performance.

(iii) Financial incapacity.

(iv) Refusal by the subcontractor to honor the bid or proposal price.

(v) Mistake of fact or law about the elements of the scope of work of a solicitation where agreement upon a reasonable price cannot be reached.

(vi) Failure of the subcontractor to meet insurance, licensing, or bonding requirements; or

(vii) The subcontractor's withdrawal of its bid or proposal.

(4) Where the Bidder/Participant has established the basis for the substitution to the satisfaction of the Coordinator, the Bidder/Participant shall make Good Faith Efforts to fulfill the Schedule of Participation if the Project Specific Goals will not otherwise be met. The Bidder/Participant may seek the assistance of the SDBE Office in obtaining a new SDBE subcontractor. If the Project Specific Goal cannot be reached and Good Faith Efforts have been made, the Bidder/Participant may substitute with a non-SDBE.

(e) If a Bidder/Participant plans to hire a subcontractor on any scope of work that was not previously disclosed in the Schedule of Participation, the Bidder/Participant shall obtain the approval of the Coordinator to modify the Schedule of Participation and must make Good Faith Efforts to ensure that SDBEs have a fair opportunity to bid on the new scope of work.

(f) The SDBE Compliance Committee, comprised of the Coordinator as the Chair and a representative from the Purchasing Department or any requested representative, shall be responsible for evaluating and reviewing issues and concerns concerning the Program, including whether a Bidder has complied with the Good Faith Efforts.

(g) If the Bidder/Participant is found to be in noncompliance with the Program or the Contract and fails to correct such noncompliance within ten working days after written notification, the City will withhold 5 percent of the amount of completed work on all monthly payments until the Bidder/Participant has come into compliance.

**XII. Protest Procedure.**

A Bidder/Participant may protest a decision regarding the implementation of the Program, including the determination that it has not made Good Faith Efforts, by filing a written grievance with supporting evidence with the Coordinator. The Coordinator shall provide a written response within ten working days of receipt of the grievance. The Bidder/Participant may appeal the Coordinator's determination in writing within ten working days of receipt to the Purchasing Director. The Director shall refer the grievance to the SDBE Compliance Committee, which shall hold a hearing and issue a written recommendation within ten working days. The Manager, upon receipt of the SDBE Compliance Committee's recommendation, shall make a final determination within ten working days.

**XIII. Dispute Resolution.**

Notwithstanding the protest procedures outlined above, mediation shall be required for all parties involved in a dispute under this program prior to initiating litigation concerning the dispute. The procedures for mediation shall be those adopted by City Council Resolution #2002-066 which is incorporated herein by reference as if fully set forth herein.

**XIV. Penalties.**

(a) Providing false or misleading information to the City in connection with an application for or challenge to certification, recertification or decertification as a SDBE, submission of a bid, responses to requests for qualifications or proposals, Good Faith Efforts documentation, post-award compliance, or other actions in violation of this program may render any bid award or contract void. A contract that is void under this section may continue in effect until an alternative can be arranged when immediate termination would result in harm to the public health or welfare.

(b) A Bidder/Participant is subject to withholding of payments under the Contract, termination of the Contract for breach, Contract penalties, decertification as a SBDE, or being barred or deemed non-responsive in future City solicitations and Contracts for up to two years, if it is found to have:

- (1) Provided false or misleading information in connection with the submission of a bid or proposal or documentation of Good Faith Efforts, post-award compliance, or other Program operations.
- (2) Failed in bad faith to fulfill the Project Specific Goal, thereby materially breaching the Contract.
- (4) Repeatedly failed to comply in good faith with substantive provisions of this program.
- (c) The City reserves the right to pursue all remedies available in law or in equity for violations of this program.

**XV. Program Review.**

(a) The Managers, the Mayor, and the City Council shall receive an annual report from the Coordinator detailing the City's performance under the Program.

(b) The Managers, the Mayor, and the City Council will review this report, including the City's progress towards eliminating discrimination in its contracting activities and marketplace, and revise the Program as necessary to meet legal and Program requirements.

(c) If the Managers, the Mayor, and the City Council find that the objectives of the Program have been achieved, the City Council shall sunset the Program.

**CITY OF FAYETTEVILLE  
SDBE COMPLIANCE PROVISIONS**

**SDBE CONTRACT PROVISIONS (CONSTRUCTION)**

**APPLICATION:**

The requirements of the Small Disadvantaged Business Program for participation in the City of Fayetteville's construction contracts are hereby made a part of these contract documents. These requirements shall apply to all contracts regardless of ownership. Copies of the Program may be obtained from:

City of Fayetteville  
Purchasing Division  
433 Hay Street  
Fayetteville, NC 28301  
Phone: (910) 433-1942  
Fax: (910) 433-1680  
E-mail: [NCameron@ci.fay.nc.us](mailto:NCameron@ci.fay.nc.us)

**SDBE COMPLIANCE REQUIREMENTS**

1. The Bidder shall provide, **with the bid**, the SDBE CONTRACT PROVISIONS (CONSTRUCTION), properly executed which signifies that the Bidder understands and agrees to the incorporated SDBE contract provisions.
2. The Bidder shall provide **with the bid**:
  - Affidavit B – INTENT TO PERFORM CONTRACT WITH OWN WORKFORCE, in making this certification the Bidder states that the Bidder does not customarily subcontract elements of this type project and will perform all elements of the work with his/her own current work forces; **and**
  - IDENTIFICATION OF SMALL DISADVANTAGED BUSINESS PARTICIPATION – This certifies that on this project listed small disadvantaged business enterprises will be used as construction subcontractors, vendors, suppliers, or providers of professional services. Enter zero dollars indicating no SDBE's are being used with this project; or
  - Affidavit A – LISTING OF GOOD FAITH EFFORTS **AND** IDENTIFICATION OF SMALL DISADVANTAGED BUSINESS PARTICIPATION, as certification that those small disadvantaged businesses listed will be used on this project.
3. Upon being named apparent low Bidder, The Bidder shall provide:
  - Affidavit C – PORTION OF WORK TO BE PERFORMED BY SMALL DISADVANTAGED FIRMS, if the portion of the work to be executed by SDBE's is **equal to or greater** than 10% of the Bidders total contract price; or,
  - Affidavit D – GOOD FAITH EFFORTS, if the goal of 10% participation by SDBE's **is not** achieved.

All written statements, certifications or intentions made by the Bidder shall become part of the agreement between the Contractor and the City of Fayetteville for performance of this Contract. Failure to comply with any of these statements, certifications or intentions, or with the SDBE compliance provisions shall constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of the City of Fayetteville whether to terminate the contract for breach.

**Subcontractor Payment Requirements:**

North Carolina General Statutes 143-134.1 (N.C.G.S.) states that the percentage of retainage on payments may by the prime contractor to the subcontractor shall not exceed the percentage of retainage on payments made by the City of Fayetteville to the prime contractor. Failure to comply with this provision shall be considered a breach of contract, and the contract may be terminated in accordance with the termination provisions of the contract.

The Contractor shall provide an itemized statement of payments to each SDBE subcontractor before final payment is processed.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Name of Company)

\_\_\_\_\_  
(Signature)

Attest: \_\_\_\_\_

\_\_\_\_\_  
(Above Name Typed or Printed)

\_\_\_\_\_  
(Title)

**City of Fayetteville**

**Affidavit A – Listing of the Good Faith Efforts**

**Affidavit of** \_\_\_\_\_

(Name of Bidder)

**I have made a good faith effort to comply under the following areas checked:**

*(A minimum of 50 value points must be checked in order to have achieved a “good faith effort”)*

- (1) Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists at least 1 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed. **Value = Ten (10) points.**
- (2) Making the construction plans, specification and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due. **Value = Ten (10) Points.**
- (3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation. **Value = Fifteen (15) points.**
- (4) Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment or minority businesses. **Value= Ten (10) points.**
- (5) Attending any pre-bid meetings scheduled by the public owner. **Value = Ten (10) points.**
- (6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. **Value = Twenty (20) points.**
- (7) Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing. **Value = Fifteen (15) points.**
- (8) Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder’s suppliers in order to help minority businesses in establishing credit. **Value = Twenty-five (25) points.**
- (9) Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible. **Value = Twenty (20) points.**
- (10) Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands. **Value = Twenty (20) points.**

In accordance with GS143-128.2 (d) the undersigned will enter into a formal agreement with the firms listed in the Identification of Small Disadvantaged Business Participation schedule conditional upon execution of a contract with the Owner. Failure to abide by this statutory provision will constitute a breach of the contract. The undersigned hereby certifies that he or she has read the terms of the Small Disadvantaged Business Commitment and is authorized to bind the Bidder to the commitment herein set forth.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_



State of North Carolina, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

**CITY OF FAYETTEVILLE  
SDBE COMPLIANCE PROVISIONS  
AFFIDAVIT B  
Intent to Perform Contract with Own Workforce  
Affidavit of**

\_\_\_\_\_  
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the \_\_\_\_\_

\_\_\_\_\_  
contract.

(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type of project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and will complete all elements of this project without the use of subcontractors, materials suppliers or providers of professional services.

The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



State of North Carolina, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

**\*THIS FORM IS NOT TO BE SUBMITTED WITH THE BID PROPOSAL\***

**CITY OF FAYETTEVILLE  
SDBE COMPLIANCE PROVISIONS  
AFFIDAVIT C**

**PORTION OF THE WORK TO BE PERFORMED BY SMALL DISADVANTAGED FIRMS**

If the portion of the work to be executed by small disadvantaged businesses as defined in G.S. 143-128.2(g) is equal to or greater than 10% of the Bidders total contract price, then them Bidder must complete this affidavit. This affidavit shall be provided by the apparent lowest responsible, responsive Bidder within **72 hours** after notification of being low Bidder.

**Affidavit of** \_\_\_\_\_ I do certify that on the  
(Name of Company)

\_\_\_\_\_ \$ \_\_\_\_\_  
(Project Number) (Dollar Amount of Bid)

I will expend a minimum of \_\_\_\_\_ % of the total dollar amount of the contract with small disadvantaged business enterprises. SDBE's will be employed as subcontractors, vendors, or providers of professional services. Such work will be subcontracted to the following firms listed below.

Name, Address, and Phone No.	*SDBE Category	Description	Dollar Value	% of Contract

\*SDBE categories: Black-African Americans (B), Hispanic-Americans (H), Asian-Americans (A), Native-Americans (I), Women (F), Socially/Economically Disadvantaged (D)

Pursuant to G.S. 143-128.2(d), the undersigned will enter into a formal agreement with small disadvantaged firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



State of North Carolina, County of \_\_\_\_\_

Subscribed and sworn to before me this      day of    20 \_\_\_\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_



**CITY OF FAYETTEVILLE**

**SDBE COMPLIANCE PROVISIONS  
AFFIDAVIT D**

**Good Faith Efforts**

If the goal of 10% participation by small disadvantaged businesses is not achieved, the Bidder shall provide the following documentation to the Owner of his good faith efforts.			
			<b>Value</b>

\*SDBE categories: Black-African Americans (B), Hispanic-Americans (H), Asian-Americans (A), Native-Americans (I), Women (F), Socially/Economically Disadvantaged (D)

Documentation of the Bidder’s good faith efforts to meet the goals set forth in these provisions. Examples of documentation shall include the following evidence:

- A. Copies of solicitation for quotes to small disadvantaged business firms. Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.
  - B. Copies of quotes or responses received from each firm responding to the solicitation.
  - C. A telephone log of follow-up call to each firm sent a solicitation.
  - D. For subcontracts where a small disadvantaged business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
  - E. Documentation of any contracts or correspondence to small disadvantaged businesses, community or contractor organizations in an attempt to meet the goal.
  - F. Copy of pre-bid roster.
  - G. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for small disadvantaged businesses.
  - H. Letter detailing reasons for rejection of a small disadvantaged business due to lack of qualification.
  - I. Letter documenting proposed assistance offered to small disadvantaged businesses in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.
- Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive bidder.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



State of North Carolina, County of  
Subscribed and sworn to before me this     day of     20  
Notary Public  
My commission expires

**CITY OF FAYETTEVILLE**

**SDBE COMPLIANCE PROVISIONS  
AFFIDAVIT E**

**SDBE DOCUMENTATION FOR CONTRACT PAYMENTS**

Prime Contractor: \_\_\_\_\_  
Address and Phone: \_\_\_\_\_  
Project Name: \_\_\_\_\_  
Pay Application # \_\_\_\_\_ Period: \_\_\_\_\_

The following is a list of payments to be made to small disadvantaged business contractors on this project for the above-mentioned period.

Firm Name and Address	*SDBE Category	Payment	Owner Use Only

\*SDBE categories: Black-African Americans (B), Hispanic-Americans (H), Asian-Americans (A), Native-Americans (I), Women (F), Socially/Economically Disadvantaged (D)

Date: \_\_\_\_\_

Approved/Certified By: \_\_\_\_\_

(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Signature)

**\*\*\*THIS DOCUMENT MUST BE SUBMITTED WITH EACH PAY REQUEST AND FINAL PAYMENT\*\*\***

**CITY OF FAYETTEVILLE  
SDBE COMPLIANCE PROVISIONS**

**Identification of Small Disadvantaged Business Participation**

I, \_\_\_\_\_

(Name of Bidder)

do hereby certify that on this project, we will use the following small disadvantaged business enterprises as construction subcontractors, vendors, suppliers or providers of professional services.

Firm Name, Address and Phone No.	Description	*SDBE Category

\*SDBE categories: Black-African Americans (B), Hispanic-Americans (H), Asian-Americans (A), Native-Americans (I), Women (F), Socially/Economically Disadvantaged (D)

**The total value of small disadvantaged business contracting will be (\$)**\_\_\_\_\_.

## **SECTION B – CONTRACT AWARD DOCUMENTS**

# CONTRACT

THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by, hereinafter called Contractor, and the City of Fayetteville, North Carolina, hereinafter called City.

## WITNESSETH

THAT WHEREAS, a Contract for **Splash Pad Installation** has recently been awarded to Contractor by City at and for \$\_\_\_\_\_ , a sum equal to the aggregate cost of the work to be done and for labor, materials, equipment, apparatus, and supplies furnished at the prices and rates respectively named therefore in the Proposal attached herewith;

AND WHEREAS, it was provided in said Award that a formal contract would be executed by and between Contractor and City, evidencing the terms of said Award, and agreement on a date to be specified in a written order of City and would complete all work as outlined under SPECIAL PROVISIONS and STANDARD SPECIFICATIONS and would complete all work as required within the schedule as shown in the SPECIAL PROVISIONS.

NOW, THEREFORE, Contractor doth hereby covenant and agree with City that it will well and faithfully perform and execute such work and furnish such labor, materials, equipment, apparatus and supplies, in accordance with each and every one of the conditions, covenants, stipulations, terms, and provisions contained in said Specifications and Provisions and in accordance with the Plans, at and for a sum equal to the aggregate cost of the work done and labor, materials, equipment, apparatus and supplies furnished at the prices and rates respectively named therefore in the proposal attached thereto, and will well and faithfully comply with and perform each and every obligation imposed upon it by said Plans and Specifications and the terms of said Award.

Contractor shall promptly make payments to all persons supplying materials in the prosecution of the work and to all laborers and others employed thereon.

Contractor shall be responsible for all damages to property of the City of Fayetteville, North Carolina, that may be consequent upon the normal procedure of its work or that may be caused by or result from the negligence of Contractor, its employees or agents, during the progress of or connected with the prosecution of the work, whether within the limits of the work or elsewhere. Contractor must restore all property so injured to a condition as good as it was when Contractor entered upon the work.

Contractor shall furthermore be responsible for and required to make good at its expense any and all damages of whatever nature to persons or property arising during the period of the Contract, caused by carelessness, neglect, or want of due precaution on the part of Contractor, its agents, employees or workmen. Contractor shall also indemnify and save harmless the City of Fayetteville, North Carolina, and the officers and agents thereof from all claims, suits, and proceedings of every name and description which may be brought against the City of Fayetteville, North Carolina, or the officers and agents thereof, for or on account of any injuries or damages to persons or property received or sustained by any person or persons, firm or corporation, or by or in consequence of any materials used in said work or by or on account of any improper material or workmanship in its construction, or by or on account of any accident, or of any other act or omission of Contractor, its agents, employees, servants or workmen.

It is agreed and understood that the Invitation for Bids, Proposal, Standard Specifications, Special Provisions, and the enumerated addenda and drawings are parts and parcels of this Contract to the same extent as if incorporated herein in full.

It is further mutually agreed that if at any time after the execution of this agreement and the surety bonds hereto attached for its faithful performance, City shall deem the surety or sureties upon such bonds to be unsatisfactory, or if, for any reason, such bonds cease to be adequate to cover performance and payment of the work, Contractor shall, at its expense, within five days after the receipt of notice from the City so to do, furnish an additional bond or bonds in such form and amount, and with such surety or sureties as shall be satisfactory to City. In such event, no further payment to Contractor shall be deemed to be due under this agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to City.

It is further agreed that the Contractor will not discriminate against any employee or applicant because of race, color, creed, sex, or religion.

And City doth hereby covenant and agree with Contractor that it will pay to Contractor, when due payable under the terms of said Specifications and said Award, the above mentioned sum, and that it will well and faithfully comply with and perform each and every obligation imposed upon it by said Specifications and the terms of said Award.

It is also agreed that if the City shall determine that it is in the City's best interest, the City shall notify the Contractor to terminate the work within seven (7) days. The Contractor shall be entitled to compensation for all work properly executed and any expenses incurred in terminating the contract and vacating the construction site. No claim shall be made by the Contractor for any change order or termination, by reason of any variation between the approximate quantities and the quantity of work as done, or for lost profits.

Contractor shall furnish with each pay application on City provided forms, beginning not later than the second application for payment, an affidavit certifying the total cost of materials and North Carolina Sales Tax paid on such materials which are included in the application for payment.

Whenever used herein, the singular shall include the plural, the plural the singular and the use of any gender shall be applicable to all genders as the context may require.

IN WITNESS WHEREOF, said Contractor has hereunto set its hand and seal (or) has caused these presents to be signed in its corporate name by its corporate seal to be hereto affixed and attested by its Secretary and the City of Fayetteville, North Carolina, has caused these presents to be signed in its corporate name by its authorized representative and seal to be hereto affixed and duly attested by its City Clerk, by authority of the City Council duly given, all as of the day and year first above written.

(Corporate Seal)

**(CONTRACTOR)**

(SEAL)

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

**CITY OF FAYETTEVILLE, NC**

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
FINANCE OFFICER

This is to certify that I have examined the attached contract documents, that after such examination I am of the opinion that such documents conform to the laws of the State of North Carolina, that the execution of the contract and the contract bonds by \_\_\_\_\_ are in due and proper form and that the foregoing agreements constitute valid and binding obligations on such parties.

\_\_\_\_\_  
ATTORNEY FOR THE CITY OF FAYETTEVILLE, NC

# PERFORMANCE BOND

Date of Contract: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

Name/Address of Principal: \_\_\_\_\_  
\_\_\_\_\_

Name/Address of Surety: \_\_\_\_\_  
\_\_\_\_\_

Name/Address of Contracting Body: \_\_\_\_\_  
\_\_\_\_\_

Amount of Bond (Printed): \_\_\_\_\_

**Project:**        **Splash Pad Installation** \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we, the PRINCIPAL and SURETY above named, are held and firmly bound unto the above named Contracting Body, hereinafter called the Contracting Body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into a certain contract with the Contracting Body, identified as shown above and hereto attached:

NOW THEREFORE, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Contracting Body, with or without notice to the Surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.



Executed in  2  counterparts.

Witness:

\_\_\_\_\_  
(Proprietorship or Partnership)

Attest: (Corporation)

By: \_\_\_\_\_

Title: \_\_\_\_\_  
(Corp Sec or Ass't Sec Only)

Witness:

\_\_\_\_\_

Countersigned:

\_\_\_\_\_  
\_\_\_\_\_  
(N.C. Licensed Resident Agent)

\_\_\_\_\_  
\_\_\_\_\_  
(Name and Address - Surety Agency)

\_\_\_\_\_  
\_\_\_\_\_  
(Surety Company Name and NC Regional  
or Branch Office Address)

\_\_\_\_\_  
(Contractor: Trade or Corporate Name)

By: \_\_\_\_\_

Title: \_\_\_\_\_  
(Owner, Partner, or Corp. Pres.  
or Vice Pres. Only)

(Corporate Seal)

\_\_\_\_\_  
(Surety Company)

By: \_\_\_\_\_

Title: \_\_\_\_\_  
(Attorney in Fact)

(Surety Corporate Seal)

# **PAYMENT BOND**

Date of Contract: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

Name/Address of Principal: \_\_\_\_\_  
\_\_\_\_\_

Name/Address of Surety: \_\_\_\_\_  
\_\_\_\_\_

Name/Address of Contracting Body: \_\_\_\_\_  
\_\_\_\_\_

Amount of Bond (Printed): \_\_\_\_\_

**Project:**        **Splash Pad Installation** \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we, the PRINCIPAL and SURETY above named, are held and firmly bound unto the above named Contracting Body, hereinafter called the Contracting Body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into a certain contract with the Contracting Body, identified as shown above and hereto attached:

NOW THEREFORE, if the Principal shall promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Executed in 2 counterparts.

Witness:

\_\_\_\_\_  
(Proprietorship or Partnership)

Attest: (Corporation)

By: \_\_\_\_\_

Title: \_\_\_\_\_  
(Corp Sec or Ass't Sec Only)

\_\_\_\_\_  
(Contractor: Trade or Corporate Name)

By: \_\_\_\_\_

Title: \_\_\_\_\_  
(Owner, Partner, or Corp. Pres.  
or Vice Pres. Only)

(Corporate Seal)

\_\_\_\_\_  
(Surety Company)

By: \_\_\_\_\_

Title: \_\_\_\_\_  
(Attorney in Fact)

Witness:

\_\_\_\_\_

Countersigned:

\_\_\_\_\_  
\_\_\_\_\_  
(N.C. Licensed Resident Agent)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Name and Address - Surety Agency)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Surety Company Name and NC Regional  
Or Branch Office Address)

(Surety Corporate Seal)

# **POWER OF ATTORNEY**

(ATTACH)

# **CERTIFICATE(S) OF INSURANCE**

(ATTACH)

## **SECTION C – ADMINISTRATIVE PROVISIONS**

## **DEFINITION OF TERMS**

The contract documents consist of the Notice to Bidders, Instructions to Bidders; General Conditions of the Contract, Special Conditions if applicable; the Drawing and Specifications, including all bulletins, addenda, or other modifications of the drawings and specifications incorporated into the documents prior to their execution; the Proposal; the Contract; the Performance Bond; the Payment Bond; Insurance Certificates; and the approval of the City Attorney. All of these items together form the contract.

Whenever in these specifications and contract the following terms, or pronouns in place of them, are used, the intent and meaning shall be interpreted as follows:

1. City/Owner - The City of Fayetteville, North Carolina
2. City Council - The Mayor - City Council of the City of Fayetteville, NC
3. City Attorney - The legal counsel employed by the City.
4. Contracting Officer - The City representative; acting directly or through an assistant fully authorized to handle the administration of all City Contracts.
5. Engineer - The City Traffic Engineer acting directly or through an assistant or other representative fully authorized to handle all technical aspects of City Contracts.
6. Project Engineer - An authorized representative of the Engineer assigned to make any and all necessary inspections of the work performed and materials furnished by the Contractor.
7. Laboratory - The official testing laboratory or laboratories employed by the City Engineer with City Council approval.
8. Bidder - Any individual, firm, partnership, or corporation submitting a proposal of the work contemplated.
9. Contractor - The individual, firm, partnership, or corporation that is awarded the contract based on their bid.
10. Superintendent - The Contractor's executive representative who is present on the work during progress, authorized to receive and fulfill instructions from the engineer or his designee, and who shall supervise and direct the construction.
11. Surety - The corporate body which is bound with and for Contractor, who is primarily liable and which engages to be responsible for the Contractor for his acceptable performance of the work for which he has contracted.

12. Proposal/Bid Guaranty - The security designated in the proposal of good faith to enter into a contract with the City of Fayetteville, North Carolina, if the work of constructing the project is awarded to a Bidder.
13. Plans - All drawings or reproductions of drawings pertaining to the construction of the work contemplated and its appurtenances.
14. Specifications - The description, provisions, and requirements contained herein, together with all written agreements made or to be made pertaining to the method and manner of performing the work, or to the quantities and qualities of materials to be furnished under the contract.
15. Change Order - A written order to the Contractor subsequent to the signing of the contract authorizing a change in the contract. The change order shall be signed by the Contractor, a City representative and Contracting Officer.
16. Surety Bond - The approved form of security furnished by the Contractor and his surety as a guarantee of good faith on the part of the Contractor to execute the work in accordance with the terms of the Contract.
17. Street - The whole right-of-way between building lines or property lines.
18. Roadway - That portion of the street included between curbs or the equivalent.
19. Sidewalk and Tree Space - That portion of the street between the curb and property line or right-of-way.
20. Street Fixtures - As used in these specifications shall mean manhole frames, grates and slabs, lamphole frames and covers, water valve boxes and covers, meter boxes and covers, public utilities and the like.
21. A.S.T.M. - American Society for Testing Materials.
22. Work - The furnishing of all labor, materials, tools, equipment, and incidentals necessary or convenient to the Contractor's performance of all duties and obligations imposed by the contract, plans and specifications.
23. Working Day - A working day shall be any day other than a legal holiday, Saturday, or Sunday on which the normal working forces of the Contractor may proceed with regular work on the contract. Unless work is suspended for causes beyond the Contractor's control, regular work requiring the presence of an inspector, will be considered as a normal working day.
24. Intention of Terms - Whenever in these specifications or on the plans, the words "directed," "required," or words of the like import are used, it shall be understood that the requirement of the engineer is intended; and similarly, the words "approved", "acceptable", or words of like import, shall mean approved by, or acceptable to the engineer, subject in each case to the final determination of the City.

END OF SECTION



## **CONTRACT REQUIREMENTS**

### **1. AWARD OF CONTRACT**

All contracts shall be awarded by the City of Fayetteville within sixty (60) days from the date of the opening of the proposals. The said sixty (60) calendar day period may be extended by written consent of the bidders whose proposal guarantees are held by the City.

### **2. TIME IN WHICH TO EXECUTE CONTRACT**

Bidder to whom award shall have been made must execute the contract and return the same with the appropriate bonds and a certificate of insurance as required herein to the City Purchasing Department within ten (10) days after the said contract has been presented to the successful bidder for signature. If the bidder shall refuse or neglect to execute the contract, the amount of the proposal guaranty shall be forfeited to the use of the City, not as a penalty, but as liquidated damages. The City may, if deemed advisable in the interest of the City, extend this time.

### **3. CONTRACT BONDS REQUIRED**

The successful bidder, at the time of the execution of the contract shall provide the City with a contract payment bond and a contract performance bond that shall be in compliance with N.C.G.S. Chapter 44A, Article 3, as follows:

- (a) A performance bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications, and conditions of the contract shall be provided. Such bonds shall be solely for the protection of the City of Fayetteville.
- (b) A laborer and materials payment bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the prompt payment for all labor or materials for which a Contractor or subcontractor is liable shall be provided. The payment bond shall be solely for the protection of the persons furnishing materials or performing labor for which the Contractor or subcontractor is liable.

The corporate surety furnishing the bonds shall be authorized to do business in the State of North Carolina, and shall be acceptable to the City Attorney. All contract payment bonds and contract performance bonds shall be executed on "Performance Bond" and "Payment Bond" forms provided in the "Contract Award Package" and be countersigned by a regularly authorized agent of the corporate surety who is resident in North Carolina and who is licensed by the North Carolina Department of Insurance.

### **4. INSURANCE**

The Contractor shall not commence work under this Contract until he has obtained all insurance required under this paragraph, and such insurance has been approved by the City Attorney, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance has been so obtained and approved. See Other Provisions Section (2) (c) below titled "Subcontractors."

The insurance required for this contract is as follows:

- (a) Commercial General Liability ISO #CG 00 01 10 93: The Contractor shall take out and maintain during the life of this contract commercial general liability insurance with limits of \$1,000,000 per occurrence; \$2,000,000 aggregate other than products/completed operations; \$2,000,000 aggregate for products/completed.
- (b) Automobile Liability ISO #CA 00 01 12 93: The Contractor shall take out and maintain during the life of this contract automobile liability insurance in an amount not less than \$1,000,000 combined single limit per

accident for bodily injury and property damage from owned, non-owned, and hired automobiles.

- (c) Workers' Compensation and Employers' Liability Insurance: The Contractor shall take out and maintain during the life of this contract workers' compensation insurance as required by the laws of the State of North Carolina and Employers' Liability with limits of \$100,000 each accident, \$500,000 policy limit and \$100,000 each employee for all employees employed on the project. In case any employee(s) engaged in work under this contract is or are not protected under the Workers' Compensation Statute, the Contractor shall provide adequate coverage for the protection of employees not otherwise protected.
- (d) Property Insurance: If contracted to construct a building, the Contractor shall purchase and maintain "Builder's Risk" insurance. This insurance shall include the interests of the City, the Contractor and Subcontractors and shall be written on a one hundred percent (100%) completed value basis (full value as of the date that all construction is finished and includes the Contractor's total cost plus profit), and to remain in force until the project is completed and accepted by the City.

Regardless of the nature of the work to be performed, coverage must also be provided for the theft or damage of building materials and supplies, which are not permanently attached and stored on site for any period of time. This coverage shall be an "Installation Floater," and where no building construction is involved, the amount of the coverage shall equal the value of the materials stored on site.

It is the responsibility of the Contractor to inform the policy provider of any and all change orders which increase the building's value. Any penalties or losses incurred due to the Contractor's failure to adequately insure the building during construction will be the Contractor's responsibility.

- (e) Owner's and Contractor's Protective Liability I.S.O. #CG 00 09 10 93:

The Contractor shall secure and maintain during the life of the contract, an Owner's and Contractor's Protective Liability insurance policy for the City, with minimum limits of \$1,000,000 per occurrence/\$2,000,000 aggregate.

#### Acceptability of Insurance

All insurance policies shall be written by insurers licensed to do business in North Carolina. It is realized that certain business activities may not be readily insurable by admitted carriers. If insurance is written by non-admitted carriers whose names appear on the current listing of approved and non-admitted carriers prepared by the North Carolina Department of Insurance, such carriers will be favorably considered assuming they meet all other requirements. Non-admitted carriers should be so identified on the Certificate of Insurance form. The City reserves the right to reject any and all certificates or policies issued by insurers with a Best's rating less than A;VII.

#### Indemnity Provision

Contractor assumes entire responsibility and liability for losses, expenses, demands and claims in connection with or arising out of any injury, or alleged injury (including death) to any person, or damage, or alleged damage, to property of the City of Fayetteville or others sustained or alleged to have been sustained in connection with or to have arisen out of or resulting from the negligence of the Contractor, his subcontractors, agents, and employees, in the performance of the work/service set forth in the Standard Specifications and Special Provisions, and any changes, addenda, or modifications including losses, expenses or damages sustained by the City of Fayetteville, and agrees to indemnify and hold harmless the City of Fayetteville, its officials, employees or volunteers from any and all such losses, expenses, damages, demands and claims and agrees to defend any suit or action brought against

them, or any of them, based on any such alleged injury or damage, and to pay all damages, cost and expenses in connection therewith or resulting therefrom. As an integral part of this agreement Contractor agrees to purchase and maintain during the life of this contract contractual liability insurance in the amount required in the general liability insurance requirements and to furnish proper evidence thereof.

Other Provisions:

- (1) Any deductible or self-insured retention must be declared to and approved by the City.
- (2) The policies are to contain, or be endorsed to contain, the following provisions:

(a) Commercial General Liability Coverage

- 1) The City of Fayetteville, its officials, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.
- 2) The Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
- 3) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(b) All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to:

City of Fayetteville Procurement Office  
433 Hay Street  
Fayetteville, NC 28301

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, and volunteers. In the event the City is damaged by the failure of the Contractor to maintain such insurance and to so notify the City, the Contractor shall bear all reasonable costs properly attributable thereto.

(c) Subcontractors

Contractor shall include all subcontractors as insurers under its policies OR shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

(d) No Waiver of Immunity

Any insurance coverage required by the terms of this contract shall not be deemed a contract of insurance purchased by the City nor a waiver of the City's immunity pursuant to NCGS 160A-485.

**5. SUBLETTING OR ASSIGNING OF CONTRACT**

The Contractor shall not sublet, sell, transfer, assign, or otherwise dispose of the contract or any portion thereof, or of the work provided for therein, or his right, title or interest therein to any person, firm, partnership, or corporation without the written consent of the City Council. Except as may be required under the terms of the Performance Bond or Payment Bond, no funds or sums of money due the Contractor under the contract may be assigned.

**6. TIME FOR COMPLETION AND LIQUIDATED DAMAGES**

As time is of the essence, the Contractor is required to commence work to be performed under this agreement within ten (10) calendar days after written notice (Notice to Proceed) from the Contracting Officer to proceed with construction. Failure by the Contractor to complete the work within the contract time will cause considerable damage to the City. Therefore, a liquidated damage charge will be assessed for each day of overrun as specified in the Special Provisions. The Contractor hereby agrees by executing the contract that such liquidated damages are considered a just and reasonable compensation to the City.

**7. CONSTRUCTION SCHEDULE**

Upon receipt of Notice to Proceed, and prior to beginning the work, the Contractor will submit a schedule to the Project Manager. Said schedule is to be updated and submitted monthly with the Contractor's application for payment. In the event the Contractor begins work prior to submitting a schedule, payments will be held until the Contractor is in compliance with this article.

**8. INTENT OF PLANS AND SPECIFICATIONS**

The drawings and specifications are complementary, one to the other. That which is shown on the drawings or called for in the specifications shall be as binding as if it were both called for and shown. The intent of the drawings and specifications is to establish the scope of all labor, materials, transportation, equipment, and any and all other things necessary to provide a complete job.

The wording of the specifications shall be interpreted in accordance with common usage of the language except that words having a commonly used technical or trade meaning shall be so interpreted in preference to other meanings.

**9. CONSTRUCTION STAKING**

The City Engineering Department will do all of the construction staking. Staking will be done only during normal office hours, Monday through Friday. All stakes knocked out by the Contractor will be replaced by the Engineering Department at a charge to the Contractor of \$5 per stake. The Contractor must give at least one day (24 hours) notice prior to requiring staking or restaking. (The Contractor will be charged a minimum of \$15 for replacing control points, P.C., etc., and \$50 for replacing monuments.)

**10. ENGINEER STATUS**

The Engineer shall provide general administration of the performance of construction contracts, including liaison and necessary inspection of the work to ensure compliance with plans and specifications. He is the agent of the City only for the purpose of constructing this work and to the extent stipulated in the contract documents. He has authority to stop work or to order work removed, or to order corrections of faulty work where such action may be

necessary to assure successful completion of the work

The Engineer shall make periodic inspections of the project at intervals appropriate to the stage of construction. He will inspect the progress, the quality and the quantity of the work.

**11. PLANS AND WORKING DRAWINGS**

The Engineer will furnish all drawings necessary to show the line, grade, and details of all construction work to be done under this contract. The Engineer will also point out the location of all underground utility lines, but the exact location of such lines cannot be guaranteed. It will, however, be the responsibility of the Contractor to protect these lines against damages at all time. Any deviation from the plans, specifications, etc., as may be required by the exigencies of the construction, in all cases will be determined by the Engineer. The Engineer reserves the right to make such alterations in the plans or in the character of the work, from time to time, as may be considered necessary or desirable to complete fully and perfectly the construction of the work, and if such alterations of the plans result in increased cost or result in decreased cost to the Contractor, an equitable adjustment therefore is to be agreed upon in writing by the Contractor and the Contracting Officer or his authorized representative.

**12. CLARIFICATIONS AND DETAIL**

In such cases where the nature of the work requires clarification by the Engineer, such clarification shall be furnished by the Engineer with reasonable promptness by means of written instructions or detail drawings, or both. Clarifications and drawings shall be consistent with the intent of contract documents, and shall become a part thereof. The Contractor shall not proceed with the work without such detail drawings and/or written clarifications.

**13. MINOR CHANGES IN THE WORK**

The Engineer will have the authority to order minor changes in the work not involving an adjustment in the contract sum or time for completion, and not inconsistent with the intent of the contract documents.

**14. TEMPORARY SUSPENSION OF THE WORK**

The Engineer shall have the authority to suspend the work, wholly or in part, for such period or periods as he may deem necessary, due to unsuitable weather or such other conditions as are considered unfavorable for the suitable prosecution of the work, or for such time as is necessary due to the failure on the part of the Contractor to carry out orders given or perform any or all provisions of the contract. Contractor shall not suspend the work without authority. Neither the failure of the Engineer to notify the Contractor to suspend work on account of bad weather nor permission by the Engineer to continue work during bad weather shall be a cause for the acceptance of any work which does not comply in every respect with the contract and specifications.

**15. AUTHORITY AND DUTIES OF PROJECT ENGINEER**

Project engineers employed by the City or City Engineer shall be authorized to inspect all work performed and materials furnished. Such inspection may extend to all or any parts of the work, and to the preparation or manufacture of the materials to be used. A project engineer may be stationed on the work to report to the Engineer as to the progress of the work and the manner in which it is being performed. Also, the project engineer is to report whenever it appears that the materials furnished and the work performed by the Contractor fail to fulfill the requirements of the specifications and contract, and to call to the attention of the Contractor such failure or other default; but such inspection, however, shall not relieve the Contractor of any obligation to perform all of the work strictly in accordance with the requirements of the specifications. In case of any dispute arising between the Contractor and the Project Engineer as to the materials furnished or of the manner of performing the work, the Project Engineer shall have the authority to reject materials or suspend work until the question at issue can be referred to the proper authority. Any suspension or work stoppage ordered by the Project Engineer or the Engineer for rejected materials or technique of performing work, shall not be the basis of a claim by the Contractor for

additional contract time. Such rejection shall also not be the basis of a future claim by the Contractor for any adjustment in his contract unit price or lump sum price of any work item contained in the contract proposal.

The Project Engineer shall in no case act as foreman or perform duties for the Contractor, nor interfere with the management of the work by the latter. The project engineer may make changes in grades and quantities when necessary to keep work in progress.

**16. SHOP DRAWINGS, SUBMITTALS, SAMPLES, DATA**

The Contractor shall submit to the Engineer all shop or setting drawings, descriptive data, samples, color charts, etc., required for the work. The Engineer shall review the shop drawings promptly, noting desired corrections, if any, and shall return copies to the Contractor within ten (10) calendar days after receipt from the Contractor. The Contractor shall furnish corrected drawings to the Engineer.

Approval of shop drawings by the Engineer shall not be construed as relieving the Contractor from responsibility for compliance with the design or terms of the contract documents nor from responsibility for errors of any sort in the shop drawings, unless such lack of compliance or errors first have been called in writing to the attention of the Engineer by the Contractor.

**17. INSPECTION OF THE WORK**

It is a condition of this contract that the work shall be subject to inspection during normal working hours by the Engineer, designated official representatives of the City, and those persons required by State law or local ordinance to test special work for official approval. The Contractor shall therefore provide safe access to the work at all times for such inspections.

Where special inspection or testing is required by State laws or local ordinances, instructions of the Engineer, specification or codes, the Contractor shall give adequate notice to the Engineer of the time set for such inspection or test, if the inspection or test will be conducted by a party other than the Engineer. Such special tests or inspections will be made in the presence of the Engineer, or his authorized representative, and it shall be the Contractor's responsibility to serve ample notice of such tests.

Should any work be covered up or concealed prior to inspection and approval by the Engineer, such work shall be uncovered or exposed for inspection if so requested by the Engineer in writing. Inspection of the work will be made promptly upon notice from the Contractor. All cost involved in uncovering, repairing, replacing, recovering, and restoring to design condition, the work that has been covered or concealed will be paid by the Contractor involved.

If such work be found not in accordance with the contract documents, the Contractor shall pay such costs unless it be found that this condition was caused by the City or a separated Contractor, in which event the City or the separated Contractor shall be responsible for the payment of such costs.

**18. TESTING**

The City reserves the right to test any or all materials and workmanship by a certified independent testing laboratory at his expense. Testing shall be accomplished as deemed necessary by the Engineer. Any necessary re-testing due to failures of previous tests shall be at the Contractor's expense.

**19. USE OF A SECTION OF THE WORK**

Whenever in the opinion of the Engineer any portion of the work is completed or is in acceptable condition for use, it shall be used for the purpose it was intended as may be directed, and such use shall not be held to be in any way acceptance of that portion of the work used or as a waiver of any of these specifications and contract. Necessary

repairs or renewals made in any section of the work, due to defective materials, or work, or natural causes, shall be performed at the expense of the Contractor.

**20. PROSECUTION OF WORK**

The Contractor shall begin the work to be performed under the contract within ten (10) days after such date as the Contracting Officer shall notify him to proceed. Commencement of work by the Contractor shall be deemed and taken as a waiver of this notice on his part. The Contractor will be required to prosecute the work in a continuous and uninterrupted manner from the time he begins the work until completion and final acceptance of the project. The Contractor is not permitted to suspend his operation except for reasons beyond his control and/or where the Engineer has authorized a suspension of the work in writing. The City will not be liable for delays of any nature providing the work is progressing satisfactorily to ensure its completion within the time set forth in the contract. Should prosecution of the work for either above reason be discontinued by the Contractor, he shall notify the Engineer at least twenty-four (24) hours before again resuming operations.

In the event that the Contractor's operations are suspended in violation of these provisions, liquidated damages will be charged to the Contractor for each and every calendar day that such suspension takes place. These damages will be additional to any damages that may become chargeable due to failure to complete the work on time. The Contractor hereby agrees by executing the contract that such liquidated damages are considered a just and reasonable compensation to the City.

**21. CITY'S RIGHT TO DO WORK**

If, during the progress of the work or during the period of guarantee, the Contractor fails to prosecute the work properly or to perform any provision of the contract, the City, after fifteen (15) days written notice sent by certified mail return receipt requested to the Contractor from the Engineer, may perform or have performed that portion of the work. The cost of the work may be deducted from any amounts due or to become due to the Contractor, such action and cost of same having been first approved by the Engineer. Should the cost of such action of the City exceed the amount due or to become due the Contractor, then the Contractor or his surety, or both, shall be liable for and shall pay to the City the amount of said excess.

**22. CHANGE ORDERS**

The City may have changes made in the work covered by the contract. These changes will not invalidate and will not relieve or release the Contractor from any guarantee given by him pertinent to the contract provisions. These changes will not affect the validity of the guarantee bond and will not relieve the surety or sureties of said bond. All extra work shall be executed under conditions of the original contract.

Except in an emergency endangering life or property, no changes shall be made by the Contractor except upon written order from the Contracting Officer, Countersigned by the Assistant City Manager authorizing such change, and no claim for adjustments of the contract price shall be valid unless this procedure is followed.

At the time of signing a change order, the Contractor shall be required to certify as follows:

"I certify that my Bonding Company will be notified forth-with that my contract has been changed by the amount of this change order, and that a copy of the approved change order will be mailed upon receipt by me to my surety."

A change order, when issued, shall be full compensation, or credit, for the extra work included, omitted, or substituted. It shall show on its face the adjustment in time for completion of the project as a result of the change in the work.

If, during the progress of the work, the City requests a change order and the Contractor's terms are unacceptable, the City without prejudice, with the approval of the City Procurement Division, may perform or have performed that portion of the work requested in the change order.

**23. FORCE ACCOUNT WORK**

Should unforeseen circumstances arise which, in the opinion of the Engineer, require work to be done which no price can be agreed upon, the Contracting Officer may require that the work be accomplished under a negotiated contract with another Contractor or with City forces or on a force account basis as follows:

- a) Skilled and common labor at the regular rate of pay. Pay for the Foreman may be included, provided in the judgment of the Engineer a Foreman is required.
- b) To the foregoing shall be added such social security and old age benefits made by the Contractor.
- c) Materials used are to be listed on invoices. Copies of vendor invoices to the Contractor which show all materials, quantities, costs, etc., shall be forwarded to the City with the prime Contractor's pay estimate.
- d) Equipment used shall be paid for at an hourly rate schedule mutually agreed upon, but in no case shall it exceed the hourly rate schedule established for such units by Associated General Contractors or other published rental rate schedules which are acceptable to the City. To the sums of a), b), c), and d) the Contractor may add up to 7.5% for overhead and up to 7.5% for profit. When force account work has been authorized, such authority shall be in writing to the Contracting Officer.

**24. DISCOVERY OF DEFECTS**

The City reserves the right, should an error be discovered in the estimate or conclusive proof of defective work or materials used by or on the part of the Contractor be discovered either before or after the final payment has been made, to claim and remove by process of law such sum or sums as may be sufficient to correct the error or make good the defects in the work and materials.

**25. REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK**

All work which has been rejected or condemned shall be remedied, or if necessary removed and replaced in an acceptable manner by the Contractor at his own expense. Work accomplished without lines and grades being given, work performed beyond the lines and grades shown on the plan or as given, except as herein provided, or any extra work done without written authority will be considered as unauthorized and will not be measured or paid for by the City. If so ordered, such unauthorized work shall be removed by the Contractor at his own expense.

**26. FAILURE TO REMOVE AND RENEW DEFECTIVE MATERIALS AND WORK**

Should the Contractor fail or refuse to remove and renew any defective materials used or work performed previously or to make any necessary repairs in the acceptable manner and in accordance with the requirements of these specifications, within the time indicated in writing, the Engineer shall have authority to cause the unacceptable or defective materials or work to be removed and renewed or such repairs to be made at the Contractor's expense. All cost and expense incurred thereby shall be charged against the defaulting Contractor and the amount thereof from



any monies due or which may become due him, or shall be charged against the appropriate contract bonds as required by paragraph 13 of the Standard Specifications. Any work performed as described in this paragraph shall not relieve the Contractor in any way from his responsibility for the work performed by him. The Contractor shall remove and renew any such defective materials and work within the amount of time specified by the Project Engineer or Engineer.

**27. SCOPE OF PAYMENTS**

The Contractor shall receive and accept the compensation as herein provided in full payment for:

- (1) Furnishing all materials, labor, tools, and equipment and for performing all work contemplated and embraced under the contract.
- (2) All loss or damages arising out of the nature of the work or from the action of the elements or from any unforeseen difficulties or obstruction which may arise or be encountered during the prosecution of the work, until its final acceptance.
- (3) All risks of every description connected with the prosecution of the work.
- (4) All expenses incurred by, or in consequence of, the suspension or discontinuance of the said prosecution of the work herein specified.
- (5) Completing the project and the whole thereof in an acceptable manner according to the plans and specifications.

**28. REQUEST AND CERTIFICATES FOR PAYMENT**

Not later than the tenth day of the month, the Contractor shall submit to the Contracting Official a request for payment for work done during the previous month. The request shall be in the form agreed upon between the Contractor and the Contracting Official, but shall show substantially the value of work done and materials delivered to the site during the period since the last payment, and shall sum up the financial status of the contract.

The making and acceptance of payment by the City shall not constitute an acceptance of the work or any part thereof.

**29. PAYMENTS**

Payments will be made monthly on a Net 30 day basis as follows:

Partial payments for mobilization will be made on the first and second payments. Up to 2 ½ percent of the value of the contract will be paid on each of these partial payments. Any excess (amount over 5 percent of the value of the contract) will be paid on the final payment.

The City will retain 2.5% of the amount of each periodic payment throughout the completion of the contract.

**30. ESTIMATED QUANTITIES**

The estimated quantities contained herein in certain items in the proposal are for the purpose of comparing bids. They are not guaranteed, and settlement will be made on the basis of the work as actually executed at the unit price in the proposal as accepted. Any variation is understood to be in the total amount of the contract and each item need not necessarily be varied the same amount.

**31. VARIATION IN ESTIMATED QUANTITY**

In the event that an item's actual quantity deviation exceeds 1 percent of the total original contract value or 200 percent of the original quantity, an equitable adjustment may be requested (in writing) by either the Contractor or the City. Any adjustment shall be based upon the increase or decrease in costs and/or time due solely to the variation. Requests which cannot be reasonably justified will be denied. Mutually agreed adjustments will be handled as change orders (Contract Requirements, Item 22). If an agreement cannot be reached, force account work (Contract Requirements, Item 23) may be used.

**32. SALES TAX CERTIFICATE**

The Contractor is to complete City forms certifying sales tax paid, on all materials used in construction. The Contractor may use his own computer forms as long as the form supplies all information requested by the City certificate. The certificate shall be furnished with each pay request, regardless of amount, and list taxes for all items included in the pay request. In the event the pay request does not include any taxable items, the certificate is still required and must certify this fact. Pay requests without the required certificate may be denied approval (and thus payment) until the certificate is provided.

**33. CLAIMS FOR EXTRA COST**

- a. Should the Contractor consider that as a result of any instructions given in any form by the Engineer, he is entitled to extra cost above that stated in the contract, he shall give written notice thereof to the Engineer within seven (7) days without delay, and shall not proceed with the work affected until further advised, except in emergency involving the safety of life or property. No claims for extra compensation will be considered unless the claim is so made.
  
- b. The Contractor shall not act on instructions received by him from persons other than the Engineer, Contracting Officer or any designated representative, and any claims for extra compensation or extension of time on account of unauthorized instruction will not be honored. The City will not be responsible for misunderstandings claimed by the Contractor of verbal instructions which have not been confirmed in writing, and in no case shall instructions be interpreted as permitting a departure from the contract documents unless such instruction is confirmed in writing and supported by a properly authorized change order.

**34. DISPUTES**

To prevent disputes and litigation or claims, the Contracting Officer shall in all cases be the point of contact and shall act as negotiator to resolve any questions concerning the performance of work or amounts to be paid under this contract. The Contracting Officer in conjunction with the Engineer will strive to resolve any questions or claims concerning the performance of the contract. All decisions shall be final and conclusive except as allowed as follows. All claims, disputes and other matters in question arising out of, or relating to, this contract not resolved by the aforementioned negotiation shall be resolved by legal action instituted and tried in the General Courts of North Carolina under North Carolina law with venue for trial being Cumberland County.

**35. PAYMENTS WITHHELD**

- a. The Contracting Official with the approval of the City may withhold payment for the following reasons:
  - 1. Faulty work not corrected.
  
  - 2. The unpaid balance on the contract is insufficient to complete the work in the judgment of the Engineer.

3. To provide for sufficient contract balance to cover liquidated damages that will be assessed.
  4. Claims filed against the Contractor or evidence that a claim will be filed.
  5. Evidence that subcontractors have not been paid.
- b. When grounds for withholding payments have been removed, payment will be released. Delay of payment due the Contractor without cause will make the City liable for payment of interest to the Contractor as provided in G.S. 143-134.1.

**36. PARTIAL UTILIZATION: BENEFICIAL OCCUPANCY**

- a. The City may desire to occupy all or a portion of the project when the work is substantially complete.
- b. Prior to the final payment, the City, may request the Contractor(s) in writing, to permit him to use a specified part of the project which he believes he may use without significant interference with construction of the other parts of the project. If the Contractor(s) agree, the Engineer will schedule a beneficial occupancy inspection, after which the Engineer may issue a Certificate of Substantial Completion. The certificate shall include the following documentation:
1. Date of substantial completion.
  2. A tentative list of items to be completed or corrected before final payment.
  3. Establishing responsibility between Contractor and the City for maintenance, heat utilities and insurance.
  4. Establishing the date for guarantees and warranties under terms of the contract.
  5. Consent of Surety.
  6. Endorsement from insurance Company permitting occupancy.

**37. FINAL INSPECTION**

The Engineer shall make final inspection of the project within ten (10) days after receipt of a written notice from the Contractor of the final completion and cleaning up of the work covered by the contract.

**38. CORRECTION OF WORK BEFORE FINAL PAYMENT**

- a. Any work, materials, fabricated items, or other parts of the work which have been condemned or declared not in accordance with the contract by the Engineer shall be promptly removed from the work site by the Contractor, and shall be immediately replaced by new work in accordance with the contract at no additional cost to the City. Work or property of other Contractors or the City, damaged or destroyed by virtue of such faulty work, shall be made good at the expense of the Contractor whose work is faulty.
- b. Correction of condemned work described above shall commence within twenty-four (24) hours after receipt of notice from the Engineer, and shall make satisfactory progress until completed.
- c. Should the Contractor fail to proceed with the required corrections, then the City may complete the work in accordance with the provisions (City's Right to Do Work).

**39. ACCEPTANCE AND FINAL PAYMENT**

When the Contractor has completed the work in an acceptable manner in accordance with the terms of the contract, the Project Engineer shall make a final inspection for acceptance of work by the City.

The making and acceptance of final payment shall constitute a waiver of all claims by the Contractor except those claims previously made and remaining unsettled.

Final certificate of payment shall be accompanied by the following:

1. Warranties and guarantees required by the contract.
2. Release and Waiver of Claim for Prime Contractors.
3. Affidavit of Contractors of payment to material suppliers and subcontractors.
4. Consent of Surety to final payment.

**40. CORRECTION OF WORK AFTER FINAL PAYMENT**

Neither the final certificate, final payment, occupancy of the premises by the City, nor any provision of the contract, nor any other act or instrument of the City, nor the Engineer, shall relieve the Contractor from responsibility for negligence, or faulty material or workmanship, or failure to comply with the drawings and specifications. He shall correct or make good any defects due thereto and repair any damage resulting therefrom which may appear during the guarantee period following final acceptance of the work except as stated otherwise under Article Guarantee. The City will report any defects as they may appear to the Contractor and establish a time limit from completion of corrections by the Contractor. The City will be the judge as to the responsibility for correction of defects.

**41. TERMINATION OF CONTRACT**

The contract shall be considered complete when all work has been completed and accepted by the Engineer.

**42. CONTRACT TERMINATION FOR CAUSE**

If the Contractor fails to begin the work under the contract within the time specified, or fails to perform the work with sufficient workers and equipment or with sufficient materials to ensure the prompt completion of the said work, or shall perform the work unsuitably or shall discontinue the prosecution of the work, or if the Contractor becomes insolvent or be declared bankrupt, or commits any act of bankruptcy, or allows any final judgment to stand against him unsatisfied for a period of forty-eight (48) hours, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever shall not carry on the work in an acceptable manner, the Contracting Officer shall give notice in writing to the Contractor and his surety of such delay, neglect or default, specifying the same.

If the Contractor within a period of ten (10) days after such notice shall not proceed in accordance therewith, then the City of Fayetteville, shall upon written certification from the Contracting Officer of the fact of such delay, neglect, or default and the Contractor's failure to comply with such notice, have full power and authority, without violating the contract to take the prosecution of the work out of the hands of said Contractor, to appropriate or use any or all materials and equipment on the ground as may be suitable and acceptable and may enter into an agreement for the completion of contract according to the terms and provisions thereof or use such other methods as in its opinion shall be required for the completion of said contract in an acceptable manner.

All costs and charges incurred by the City of Fayetteville, together with the costs of completing the work under contract, shall be deducted from any monies due or which may become due said Contractor. In case the expense so incurred by the City of Fayetteville shall be less than the sum which would have been payable under the contract,

if it had been completed by said Contractor, then the said Contractor shall be entitled to receive the difference and in case such expense shall exceed the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay to the City of Fayetteville the amount of said excess.

**43. CONTRACT TERMINATION FOR CONVENIENCE**

If the City shall determine that it is in the City's best interest, the City shall notify the Contractor to terminate the work within seven (7) days. In such event, the Contractor shall be entitled to compensation for all work properly executed and any expenses incurred in terminating the contract and vacating the construction site. No claim shall be made by the Contractor for any loss of anticipated profits because of any alteration, change or termination, or by reason of any variation between the approximate quantities and the quantity of work as done.

END OF SECTION